

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 UNITED STATES OF AMERICA)
4)
5 vs.) Criminal Action
6)
7 RAFAEL LEONER-AGUIRRE,) No. 15-10338-FDS
8 Defendant)
9)
10)
11)
12)

13 BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

14 JURY TRIAL DAY 4

15 TESTIMONY ONLY

16 John Joseph Moakley United States Courthouse
17 Courtroom No. 2
18 1 Courthouse Way
19 Boston, MA 02210

20 November 9, 2017
21 9:29 a.m.

22
23 Valerie A. O'Hara
24 Official Court Reporter
25 John Joseph Moakley United States Courthouse
1 Courthouse Way, Room 3204
Boston, MA 02210
E-mail: vaohara@gmail.com

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VICKY MARTINEZ CHACON

By Mr. MacKinlay

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By Mr. Halpern

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IRWIN MARTINEZ

By Mr. Pasricha

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SEAN CONNOLLY

By Mr. Pasricha

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BRIAN ESTEVEZ

By Mr. Pasricha:

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EXHIBITSFOR I.D.IN EVIDENCE

124, 125 and 126

72

26, 27, and 28

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22.1, 22.2 and 22.3

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1 TESTIMONY ONLY

2 THE CLERK: All rise for the jury.

3 (JURORS ENTERED THE COURTROOM.)

4 THE CLERK: Thank you. You may be seated. Court is
5 back in session.

6 THE COURT: Ladies and gentlemen, welcome back. I
7 understand one of you had a traffic issue this morning. That
8 does happen, and we'll just do the best we can. Let's see how
9 the day goes. I may see if we can't go at least a few minutes
09:29AM 10 maybe past one depending where we are in the evidence and just
11 to try to gain a little bit back. In the meantime, we'll get
12 going.

13 We have a new protocol for adverse weather conditions
14 if we have a blizzard or something, and I want to make sure
15 what that is, but next week I'll tell you what to do so you'll
16 know what to do if the schools are closed.

17 All right. Let's get going. Ms. Martinez, you
18 understand that you are still under oath?

19 THE WITNESS: Yes.

09:30AM 20 THE COURT: All right. Mr. MacKinlay.

21 VICKY EULLALIA MARTINEZ CHACON, RESUMED

22 CROSS-EXAMINATION, CONTINUED

23 (Through the Interpreter)

24 BY MR. MACKINLAY:

25 Q. Where we left off yesterday, you had described to the jury

1 that that Tremendo was the first word of the Enfermos clique in
2 Chelsea?

3 A. Yes.

4 Q. Can you turn that microphone a little bit more towards
5 you. Thank you. And you've described at some point what a
6 homeboy was. Was Tremendo a homeboy?

7 A. Yes, yes.

8 Q. Do you also, does he use another name besides Tremendo?

9 A. Yes.

09:31AM 10 Q. What name is that?

11 A. Carlos.

12 Q. Also, when we left off yesterday, we were talking about
13 when you were in Michigan, and you were discussing with the
14 members of the jury about a conversation Tremendo told you
15 about that he had with Cilindro. Do you remember that?

16 A. Yes.

17 Q. What did Tremendo tell you Cilindro told him while you
18 were in Michigan?

19 A. To come here because there were many people to recruit
09:32AM 20 here and there were also many chavalas.

21 Q. By the way, back then did you have a telephone number that
22 you were using to communicate?

23 A. Yes.

24 Q. If I suggested a number of 248-818-8779, is that the
25 number you were using back then?

1 A. Yes.

2 Q. In discussing Cilindro as well with Tremendo, do you know
3 anything about Cilindro's source of income?

4 A. Yes.

5 Q. Describe what you know of Cilindro's income.

6 A. .he sold drugs.

7 Q. Do you know what kind of drugs?

8 A. Yes.

9 Q. What kind?

09:33AM 10 A. Marijuana.

11 Q. Do you know what he did with the money he made from
12 selling marijuana?

13 A. Yes.

14 Q. What did he do?

15 A. He would give it to Tremendo.

16 Q. And do you know what Tremendo did with the money he
17 receives from Cilindro from the marijuana business?

18 A. Yes.

19 Q. What did he do with it?

09:33AM 20 A. With part of it, he would send it to El Salvador, and the
21 other part he would use to buy weapons.

22 Q. And how do you know all that?

23 A. Because he said it.

24 Q. Who said it?

25 A. Tremendo.

1 Q. Yesterday you discussed meetings, clique meetings that
2 were conducted in Cilindro's room. Do you remember that?

3 A. Yes.

4 Q. You also discussed meetings that were on a speaker phone
5 or that were on a conference, that were held in your apartment?

6 A. Yes.

7 Q. I believe you mentioned the word "activate" was a word
8 that you heard. Describe what you heard and the context of it.

9 A. Yes. The people in El Salvador were telling the people
09:35AM 10 here not to activate yet.

11 Q. Did you hear further conversation about what "activate"
12 meant?

13 A. Yes.

14 Q. What did you hear?

15 A. Activate is like to do things like steal or kill chavalas.

16 Q. Did you hear Tremendo speaking at that time?

17 A. Yes.

18 Q. What did you hear him saying?

19 A. He said that, yeah, the people in El Salvador said that,
09:36AM 20 but he is the one that is here and he is the one that is going
21 to give the orders.

22 Q. And did he give the orders to activate to his clique?

23 A. Yes.

24 Q. How do you know that?

25 A. Because they went to rob.

1 Q. Did you -- were there other cliques that were involved
2 with Enfermos around that time?

3 A. Yes.

4 Q. Do you know which cliques they were, Boston cliques?

5 A. It was the Everett Locos.

6 Q. How do you know that?

7 A. Because they would say it.

8 Q. Who would say it?

9 A. Tremendo was the one that said it.

09:37AM 10 Q. What did you hear Tremendo say about the Everett clique?

11 A. That they wanted to unite with them.

12 Q. Were there meetings with the Everett clique?

13 A. No.

14 Q. You mentioned recruitment in high schools yesterday. Do
15 you know which high schools recruitment for Enfermos were
16 targeting?

17 A. Yes.

18 Q. Which high schools?

19 A. Chelsea.

09:38AM 20 Q. And who from the clique was designated as a recruiter at
21 Chelsea High School?

22 A. Cilindro, Roca and Cuervo.

23 Q. How do you know that?

24 A. Because Tremendo told them that they had to go and recruit
25 people.

1 Q. And were you present when he told them that?

2 A. Yes.

3 Q. You described some YouTube videos yesterday, and we played
4 one that you recognized the voice and would know that Tremendo
5 made in your basement in Michigan. Do you remember that?

6 A. Yes.

7 MR. MACKINLAY: Your Honor, at this time I'd like to
8 request to play Exhibit Number 75 and also ask the members of
9 the jury turn to tab next 76 in the transcript binder that they
09:39AM 10 have before them.

11 THE COURT: All right.

12 (Video played)

13 Q. Ms. Martinez, just to be clear, none of the images on the
14 video are Tremendo?

15 A. No.

16 Q. But you do recognize his voice?

17 A. Yes.

18 Q. At the end, did you hear the part about sending out a
19 greeting?

09:43AM 20 A. Yes.

21 Q. Did you know any of those people?

22 A. I only heard that he mentioned them.

23 Q. Do you know the name Bunker?

24 A. Yes.

25 Q. How do you know the name Bunker?

1 A. Because Tremendo used to speak with him.

2 Q. And where according to your understanding was Bunker when
3 Tremendo spoke to him?

4 A. He was in jail in El Salvador.

5 Q. Do you know the name Violento?

6 A. Yes.

7 Q. And how do you know that name?

8 A. Because Tremendo also spoke about him.

9 MR. MACKINLAY: Your Honor, we completed using the
09:44AM 10 transcript binders for the time being.

11 THE COURT: Okay. If you want to set those aside,
12 ladies and gentlemen.

13 Q. Did Tremendo have weapons that he used?

14 A. Yes.

15 Q. What weapons?

16 A. He had a machete and a gun.

17 MR. MACKINLAY: May I approach, please, your Honor?

18 THE COURT: Yes.

19 Q. I'm showing you what we marked Exhibit 17. Do you
09:45AM 20 recognize that?

21 A. Yes, it's very similar to the one he had.

22 Q. He, meaning Tremendo?

23 A. Yes.

24 MR. MACKINLAY: Your Honor, I would offer it into
25 evidence.

1 MR. HALPERN: Objection.

2 THE COURT: Sustained.

3 MR. MACKINLAY: Mark it for purposes of identification
4 then at this time, your Honor?

5 THE COURT: It's marked as Exhibit 17.

6 (Exhibit 17 was marked for identification.)

7 Q. You mentioned a firearm or a gun; is that right?

8 A. Yes.

9 MR. MACKINLAY: May I approach again?

09:46AM 10 THE COURT: Yes.

11 Q. I'm showing you an item to be marked as Exhibit 149. Do
12 you recognize this?

13 A. Yes.

14 Q. What do you recognize this as?

15 A. It's a gun. It looks like the gun Tremendo had.

16 MR. MACKINLAY: Again, your Honor, I'd mark it for
17 identification at this time.

18 THE COURT: It's 149, yes.

19 (Exhibit 149 was marked for identification.)

09:46AM 20 Q. Now, Ms. Martinez, I direct your attention to the machete.
21 Were you present at any time when Tremendo possessed the
22 machete?

23 THE INTERPRETER: I'm sorry, could you repeat the
24 question for the interpreter?

25 MR. MacKINLAY: Certainly.

1 Q. Were you present at any time that Tremendo was in
2 possession of the machete?

3 A. Yes.

4 Q. When was that in relation to when he was arrested for the
5 subsequent charge?

6 A. It was a week before.

7 Q. Were you with Tremendo?

8 A. Yes.

9 Q. What happened that evening?

09:47AM 10 A. We were on our way to go have -- to eat at the corner from
11 where we lived.

12 Q. Did anything occur when you were going to eat with
13 Tremendo?

14 A. Yes.

15 Q. By the way, was he armed at that point with the machete?

16 A. Yes.

17 Q. How did he --

18 THE COURT: I'm sorry, I don't understand what
19 evening. Is this before he was arrested, when he was arrested,
09:48AM 20 what are we talking about here? I don't understand.

21 MR. MACKINLAY: I'll clarify it then.

22 Q. Was it approximately a week before he was arrested on
23 state charges there was an incident?

24 A. Yes, it was about a week and a half before.

25 Q. And do you know that he was arrested on April 16th, 2014?

1 A. Yes.

2 Q. You were there on that occasion as well; is that correct?

3 A. Yes.

4 Q. Going back to the incident with the going out to eat,
5 where did that occur?

6 A. In Chelsea.

7 Q. Was Tremendo armed with a machete that day?

8 A. Yes.

9 Q. How did he carry it?

09:49AM 10 A. He had it in the back.

11 Q. What do you mean in the back?

12 A. Put into his pants back here.

13 Q. What occurred that day, that evening when you were going
14 to get something to eat with Tremendo?

15 A. Two guys were coming, and Tremendo recognized them as
16 being from the 18s, and he started saying things to them.

17 Q. Who recognized him as being with the 18th?

18 A. Tremendo.

19 Q. Did he -- do you know how he knew him to be with 18th
09:50AM 20 Street?

21 A. Yes.

22 Q. How do you know that Tremendo knew it was 18th Street?

23 A. Because Cilindro had already shown him photos of them.

24 Q. How were the photos displayed?

25 A. He had shown them from Facebook because they had photos in

1 Facebook.

2 Q. Photos of whom did they have in Facebook and who had them?

3 A. They were 18s in the photos, and Cilindro had the photos.

4 Q. Did you know the name at the time of the person that you
5 came to meet on the street?

6 A. I'm sorry, could you rephrase that?

7 Q. Yes. Do you know the name of the person from 18th Street
8 who you met on the street?

9 A. Yes.

09:51AM 10 Q. What is it?

11 A. Christian.

12 Q. When you mentioned a moment ago that they started talking,
13 who started talking?

14 A. Tremendo.

15 Q. What did you hear him say?

16 A. He said, What's up, girl? I'm the Tremendo from the
17 Enfermos Criminales.

18 Q. Was there just one person from 18th Street or more than
19 one?

09:52AM 20 A. There were two.

21 Q. Do you know the name of the other person?

22 A. No.

23 Q. After Tremendo announced his name and his clique and his
24 gang, what happened next?

25 A. He pulled out his machete and the other guy took out a

1 knife.

2 Q. Did the other guy say anything back and forth at that
3 time?

4 A. No.

5 Q. Describe the knife that you said that the other guy --
6 referring to Christian, was it?

7 A. It was a small knife.

8 Q. Did Christian have it or the other guy whose name you
9 don't know had it?

09:53AM 10 A. Christian.

11 Q. Did you see what happened next?

12 A. They started fighting, Tremendo with the machete and the
13 other guy with the knife, and then Tremendo had hit him in the
14 head with the machete and wounded him.

15 Q. Did you see what Christian did when he got hit on the head
16 with the machete?

17 A. He fell sitting in the middle of the street.

18 Q. Was he bleeding?

19 A. Yes.

09:54AM 20 Q. Where?

21 A. From the head.

22 Q. Did you see what the second person did?

23 A. He took him walking, and they went to the hospital.

24 MR. MACKINLAY: May I approach, your Honor?

25 Q. I'm showing you an item that we marked as

1 Exhibit Number 119. Do you recognize that at all?

2 A. Yes, it looks like the one that Christian had.

3 MR. MACKINLAY: Could we mark it for identification,
4 please, at this time, your Honor, Exhibit 119?

5 THE COURT: Yes.

6 (Exhibit 119 was marked for identification.)

7 Q. Just so that we're clear about this, the machete, did
8 Tremendo have a machete like this machete at the time of the
9 attack?

09:55AM 10 A. Yes.

11 Q. And did Christian have a knife that looked like this knife
12 at the time of the attack?

13 A. Yes.

14 Q. What happened after you saw Tremendo strike Christian with
15 the machete and he went to the sitting position?

16 A. We went to the apartment.

17 Q. Your apartment that you shared with him?

18 A. Yes.

19 Q. What happened there?

09:56AM 20 A. He went to the bathroom to wash the machete.

21 Q. Wash it from what?

22 A. Of the blood that was on it.

23 Q. Did you speak to Tremendo at your apartment about the
24 attack that occurred moments before?

25 A. Yes.

1 Q. What did he tell you?

2 THE INTERPRETER: I'm sorry, I need to ask for
3 repetition.

4 A. He had wounded him on the head and he didn't know what had
5 happened to him.

6 Q. Are you familiar around this time period of robberies that
7 were conducted by Tremendo?

8 A. Yes.

9 Q. How do you know about the robberies, any robbery that was
09:58AM 10 committed by Tremendo during that time period?

11 A. Because when he'd go to rob, I would also go in the car.

12 Q. Would there be someone who would drive the car?

13 A. Yes.

14 Q. Who would be the driver typically on robberies around that
15 time period?

16 A. It was Blanquito.

17 Q. Did Blanquito participate in any robberies?

18 A. No, he would stay with me.

19 Q. And just to be clear, this is the end of March until
09:58AM 20 April 16th of 2014?

21 A. Yes.

22 Q. Do you have a specific memory of certain incidents
23 occurring?

24 A. Yes.

25 Q. Tell the jury about any robbery that you recall

1 specifically occurring during that time period.

2 A. One time he stole in Chelsea. He robbed a chain from a
3 man. That same night, we went to Everett, but he wasn't able
4 to steal anything, then we went to Revere, and in Revere he
5 took the backpack from a guy. The guy tried to oppose the
6 robbery, and he said that he had wounded him and left him lying
7 on the ground.

8 And in Chelsea from a woman, he tried to rob her
9 phone, and the woman said no, that she didn't want to, and so
10:00AM 10 he hit her with the flat part of the machete.

11 Q. How do you know about these incidents?

12 A. Because he came to the car telling the others.

13 Q. After the incident occurred?

14 A. Yes.

15 Q. Did those incidents occur the same night or different
16 nights?

17 A. Those were one night.

18 Q. Were there other robberies that occurred during that time
19 period that you're aware of based on being present?

10:01AM 20 A. Yes.

21 Q. How many?

22 A. About three or four more.

23 Q. Did Tremendo use a weapon in the robberies?

24 A. Yes.

25 Q. What weapon?

1 A. The machete and the gun.

2 Q. On that night that there were multiple robberies that you
3 described in multiple towns, cities, what happened after?

4 A. They were going to go and split it up at the apartment
5 where we lived.

6 Q. And were you present later that evening after the
7 robberies?

8 A. No, they would meet in Cilindro's room.

9 Q. Do you know what the money from the robberies was used
10:02AM 10 for?

11 A. Yes.

12 Q. What was it used for?

13 A. They were gathering money to buy weapons and to send to
14 El Salvador.

15 Q. We talked about the day that Tremendo was arrested. Prior
16 to that, do you recall an incident of Cuervo being injured?

17 A. Yes.

18 Q. How do you know about the incident of Cuervo being
19 injured?

10:03AM 20 A. Because Tremendo received a phone call saying that Cuervo
21 had been wounded.

22 Q. Did Tremendo tell you anything about what he knew about
23 the circumstances of him being wounded?

24 A. No.

25 Q. Can you describe Tremendo's reaction to the phone call

1 that he received with that information?

2 A. He became angry.

3 Q. Did he say anything at the time you saw him being angry?

4 A. No.

5 Q. I turn your attention to the day of the arrest,

6 April 16th, 2014. What were you doing earlier in the day?

7 A. I was looking for an apartment with a girlfriend.

8 Q. Where were you looking for an apartment?

9 A. We were looking around Foyo Compado, and then she told me

10:05AM 10 about a laundromat where they put up announcements.

11 Q. Is that in Chelsea?

12 A. Yes.

13 Q. Did you go to the laundromat with your friend?

14 A. We were on our way over there.

15 Q. Did anything occur on your way there?

16 A. Yes.

17 Q. What happened?

18 A. There were two guys behind us, and allegedly they were

19 from the 18s, and they knew her because supposedly she got

10:06AM 20 along or had gotten along with the 18s.

21 Q. Hold on. Let's go back over that. Where did you

22 encounter these people?

23 A. I'm sorry.

24 Q. Where did you encounter these people?

25 A. Around Foyo Compado.

1 Q. Did you recognize them?

2 A. No, I did not know them.

3 Q. Did the girlfriend you were with recognize them?

4 A. Yes, she did.

5 Q. Did she say anything about recognizing them?

6 A. Yes, she said they were 18s and that we had to walk
7 quickly.

8 Q. Did you walk quickly?

9 A. Yes.

10:06AM 10 Q. Where did you go?

11 A. We were heading towards the laundry, and she said this is
12 where Cuervo lives, let's go there instead.

13 Q. Was she friends with Cuervo, your girlfriend?

14 A. Yes.

15 Q. Did you see what the other two people from 18th Street
16 were doing?

17 A. They were just behind us.

18 Q. Following you?

19 A. Well, at first they were following us, but then we didn't
10:07AM 20 see them any longer when we got to Cuervo's house.

21 Q. When you got to Cuervo's house, did your girlfriend have a
22 conversation with Cuervo?

23 A. Yes, she told him that they had been following us.

24 Q. Did she provide the name of the person?

25 A. Yes, she said Papelito.

1 Q. Did you see Cuervo at that time?

2 A. Yes.

3 Q. Did you observe the injuries that he had sustained
4 previously?

5 A. Yes, he was lying in bed.

6 Q. Could you see his injuries as he was laying in bed?

7 A. No, I don't recall exactly.

8 Q. Did you notice any bandages anyplace on his body?

9 A. Yes.

10:08AM 10 Q. Where were the bandages?

11 A. I believe it was on his arm.

12 Q. Did your girlfriend tell Cuervo what had just happened?

13 A. Yes.

14 Q. Describe Cuervo's reaction.

15 A. He didn't do anything. He remained silent.

16 Q. Was Tremendo present?

17 A. No, I sent him a message that I was there.

18 Q. Did you talk to him or send him a message about what had
19 happened?

10:09AM 20 A. Yes.

21 Q. What did you tell him?

22 A. I told him that we had been followed, and he said okay,
23 stay where you are, I'm going to go get you.

24 Q. And did he come and get you?

25 A. Yes, he came.

1 Q. Did he come in a car or on foot?

2 A. In a car.

3 Q. Was there someone else driving?

4 A. Yes.

5 Q. Who was driving?

6 A. Blanquito.

7 Q. Was there anyone else in the car?

8 A. Yes.

9 Q. Who else?

10:10AM 10 A. Gallito.

11 Q. What happened once Tremendo arrived with Blanquito and
12 Gallito?

13 A. We got down, we went down from where we had been, and we
14 were walking, and then he saw the two guys.

15 Q. How do you know he saw the two guys?

16 A. Because he said, oh, look they're coming, we don't have to
17 go looking for them because they're already coming.

18 Q. What did you do?

19 A. He told me go to the car, and he sent Rosemary and myself
10:11AM 20 to the car.

21 Q. Rosemary, is that the girlfriend you were with earlier?

22 A. Yes.

23 Q. Was Tremendo armed at this time?

24 A. Yes.

25 Q. What was he armed with?

1 A. He had the gun.

2 Q. Did you follow his instructions when he told you he saw
3 the two people?

4 A. Yes.

5 Q. What did you do?

6 A. I got in the car, and I stayed there with Rosemary.

7 Q. Did you see what Tremendo did?

8 A. He went out to look for the guys with Blanquito and
9 Gallito.

10:12AM 10 Q. Were you able to see what happened from where you were in
11 the car?

12 A. Yes, I was in the back.

13 Q. And where was the car stopped or parked?

14 A. At a corner, and they were behind the car.

15 Q. Who is they?

16 A. Tremendo, Blanquito Gallito, and the other two that were
17 fighting.

18 Q. Were you watching them as they were fighting?

19 A. Yes, they were fighting.

10:13AM 20 Q. But were you looking in the direction of where they were
21 fighting?

22 A. Yes.

23 Q. What did you see?

24 A. I just saw that they were fighting, and then I heard a
25 shot, and then Tremendo, Gallito and Blanquito ran to the car.

1 Q. Did you just hear one shot or more than one shot?

2 A. I only heard one.

3 Q. And how long after the shot did you see them run back to
4 the car?

5 A. Immediately after the shot, they took off running.

6 Q. How far away from where you were in the car was Tremendo
7 and Gallito and Blanquito?

8 A. Like from here to the door.

9 Q. You mean the door of the courtroom, ma'am?

10:14AM 10 A. Yeah, a little bit further.

11 Q. I estimate 40, 50 feet; is that about right?

12 A. Perhaps.

13 Q. Did they come back and get into the car?

14 A. Yes.

15 Q. What positions or where in the car did each one of them
16 come and sit?

17 A. Blanquito was driving, and Tremendo was in the back with
18 me and with Rosemary.

19 Q. What happened when they all got into the car?

10:14AM 20 A. Tremendo said, "I shot him and I don't know if he died."

21 Q. What was he wearing at the time, do you remember?

22 A. He was wearing white pants. I don't remember the shirt.

23 Q. After Tremendo said, "I shot him and I don't know if he
24 died or not," what happened next?

25 A. Further down he said to stop and that he was going to go

1 and get rid of the gun and change his clothes.

2 Q. I mean further down, what do you mean?

3 A. He was already driving, and about two or three minutes
4 down the road, he stopped.

5 Q. While you're driving down the road, did you see any
6 police?

7 A. Yes.

8 Q. Where did you see the police?

9 A. We saw them further down where they stopped us.

10:16AM 10 Q. How long after the shooting were you stopped in the car by
11 the police?

12 A. About four minutes later.

13 Q. Was there a police car following you or anyone following
14 you?

15 A. No.

16 Q. Was Tremendo in the car the whole time?

17 A. No, he got out before.

18 Q. When the car was stopped by the police, what happened?

19 A. They stopped us, they handcuffed us, and they asked us
10:17AM 20 where was the person that had fired the shot.

21 Q. And did you tell them at that point?

22 A. No.

23 Q. Did they take everybody back to the station?

24 A. Yes.

25 Q. And placed under arrest and taken back to the station?

1 A. Yes.

2 Q. Back at the police station, were you interviewed by the
3 police?

4 A. Yes.

5 Q. Did you tell them the truth about what happened?

6 A. No.

7 Q. Why not?

8 A. Because I was scared, because Gallito had said when we
9 were on our way that we knew what was going to happen if we
10 talked.

10:18AM

11 Q. When did Gallito tell you that?

12 A. When the police was taking us out.

13 Q. Taking you out of the car that they had stopped?

14 A. From the police car.

15 Q. What did you understand what Gallito said to mean?

16 MR. HALPERN: Objection.

17 THE COURT: I'm sorry.

18 MR. HALPERN: I think the name is wrong unless I
19 misunderstood it.

10:18AM

20 THE COURT: I thought she said Gallito.

21 MR. HALPERN: I thought there was a confusion between
22 Blanquito and Gallito. I may have misunderstood.

23 THE COURT: Why don't we clarify.

24 Q. Who told you, "You know what will happen if you talk?"

25 A. Gallito.

1 Q. And when did Gallito tell you that?

2 A. As we were getting out of the police car.

3 Q. And what did you understand what he said to mean?

4 A. That they would kill us.

5 Q. Now, eventually what happened to the case against you
6 where you were taken back to the station on that particular
7 night?

8 A. I was arrested, and the next day the charges were dropped,
9 and I was able to leave.

10:20AM 10 Q. Now, did Tremendo have a backpack that night?

11 A. Yes.

12 Q. When he got back into the vehicle, did you see the
13 backpack?

14 A. Yes.

15 Q. Did he have it with him?

16 A. Yes.

17 Q. When he got out of the car, did you see what he did with
18 the backpack?

19 A. I'm sorry.

10:20AM 20 Q. When he got out of the vehicle before the police stopped
21 you, did you see what Tremendo did with the backpack?

22 A. Yes, he had it.

23 Q. Since the date of Tremendo being placed under arrest,
24 which was that same day, correct --

25 A. Yes.

1 Q. -- had you had the chance to speak to him in person?

2 A. Yes, I went to visit him.

3 Q. How many times did you go to visit him?

4 A. Many times.

5 Q. And where did you visit him?

6 A. At Nashua.

7 Q. Nashua Street Jail?

8 A. Yes.

9 Q. Where he was detained on the arrest that night?

10:21AM 10 A. Yes.

11 Q. Did you also speak to him by telephone?

12 A. Yes.

13 Q. Did you bring him money?

14 A. Yes, I put money in his canteen.

15 Q. And canteen is, what, an account he can access?

16 A. Yes, to buy food.

17 Q. In addition to your visits and phone calls, did you also
18 receive anything in the mail from him?

19 A. Yes, letters.

10:22AM 20 Q. How many letters did you receive?

21 A. Several.

22 Q. Did you talk to Tremendo in one of your meetings or phone
23 calls about the letters that he was sending?

24 A. No.

25 Q. Do you know if they were being monitored?

1 A. He said that the ones that were outgoing were not
2 monitored.

3 Q. By monitored, meaning what? What did he describe that to
4 mean?

5 A. That they wouldn't be read but that the ones that were
6 sent to him that they would read.

7 Q. Sent into the institution?

8 A. Yes.

9 Q. Did Tremendo talk to you about other conversations that he
10:23AM 10 had about Enfermos?

11 A. No.

12 Q. Did he talk to you about conversations with his mother?

13 A. Yes.

14 Q. What did he tell you about those conversations?

15 A. He would talk to her on the phone, and sometimes he would
16 ask her how the other people from his gang were down there.

17 Q. Down there, meaning where?

18 A. In El Salvador.

19 Q. At some point, did you decide to leave the Boston area and
10:24AM 20 move?

21 A. Yes.

22 Q. How long after the evening where you were both arrested
23 did that occur?

24 A. About a year and some, over a year.

25 Q. During that time, did you have a child?

1 A. Yes.

2 Q. This is a child that you had with Tremendo?

3 A. Yes.

4 Q. Why did you decide to leave the Boston area and move your
5 family?

6 THE INTERPRETER: I'm sorry, I didn't hear the last
7 part of the question?

8 Q. Sure. Why did you decide to leave the Boston area and
9 move your family?

10:25AM 10 A. Because I was afraid that members of his gang would do
11 something to me.

12 MR. MACKINLAY: Can I have just one moment, please,
13 your Honor. No further questions of the witness, your Honor.

14 THE COURT: All right. Cross-examination.

15 Because we started late, why don't we keep going for a
16 while.

17 MR. HALPERN: I could use like a minute. Okay.

18 THE COURT: We'll break about eleven.

19 CROSS-EXAMINATION

10:26AM 20 BY MR. HALPERN:

21 Q. Good morning, Ms. Martinez.

22 A. Good morning.

23 Q. Yesterday you were asked about a phone call that you said
24 you overheard between Rafael and Cilindro while you were still
25 in Michigan. Do you remember that?

1 A. Yes.

2 Q. And do you remember that yesterday when you were asked
3 about that phone call, you testified that what you knew about
4 that phone call was that Cilindro told him when you got to
5 Massachusetts, he'd have a room for him, he'd get him a room?

6 A. Yes.

7 Q. Yesterday when you were asked what you remembered from
8 that phone call, you didn't say anything about hearing Cilindro
9 talk about coming to Massachusetts because there were more
10 chavalas here.

10:27AM

11 A. But Cilindro said that to him.

12 Q. You remembered that today?

13 A. He said that to him.

14 Q. Yesterday when you testified, you forgot that part?

15 A. But it's true, he did say that.

16 Q. Just do you agree with me that yesterday you left that
17 part out?

18 A. Yes.

19 Q. And after you testified yesterday, did someone remind you
20 that you left that part out?

10:28AM

21 A. No.

22 Q. It was the first question you were asked today.

23 A. Yes.

24 Q. Did someone tell that you they were going to ask that
25 question today because you forgot to say it yesterday?

1 A. No.

2 Q. So it just happened, and you don't know why that the first
3 question you were asked today was about something you forgot to
4 say yesterday?

5 A. Excuse me.

6 Q. I'll move on. Your son was born about eight months after
7 Rafael was arrested?

8 A. Yes.

9 Q. He'll be about -- he'll be three years old next month,
10:29AM 10 right?

11 A. Yes.

12 Q. The most important thing in your life?

13 A. Yes.

14 Q. And it would be hard for you to name anything more
15 important to you than having your son grow up in the
16 United States?

17 A. Excuse me.

18 Q. It would be very hard for you to think of anything more
19 important to you than having your son grow up in the
10:30AM 20 United States?

21 A. I don't understand the question.

22 Q. Would you rather have your son grow up here or in
23 El Salvador?

24 A. Here.

25 Q. You don't want your son to ever have to sit on top of a

1 train for a month in order to find a better life?

2 A. No. My three children.

3 Q. You have three children now?

4 A. Yes.

5 Q. How old are they?

6 A. My daughter is one month old, and my other daughter is
7 nine years old, and all three of them are important to me.

8 Q. And important that they have the opportunities that would
9 be available to them growing up here compared to El Salvador?

10:32AM 10 A. Yes.

11 Q. And you would do whatever you needed to do in order to
12 make sure that your kids have the opportunity to stay here and
13 grow up here?

14 A. Not anything.

15 Q. Your life changed in some big ways when Donald Trump was
16 elected president?

17 MR. MACKINLAY: Objection.

18 THE COURT: Sustained.

19 MR. HALPERN: Can I be heard?

10:32AM 20 THE COURT: No.

21 Ladies and gentlemen, this case should be decided
22 without any regard for politics, regardless of the politics of
23 anyone in the courtroom or out but only on the evidence before
24 you.

25 Go ahead.

1 Q. You have lived with fear for a number of months that you
2 could be deported?

3 A. I'm still in the process.

4 Q. But when you came to the United States, you were already
5 legally an adult?

6 A. Yes.

7 Q. Rafael was a minor, right?

8 A. No, he was an adult already.

9 Q. How old was he?

10:33AM 10 A. He was about 21 years old or 20, but he used different
11 papers when he came.

12 Q. All right. But in terms of what his papers showed, he was
13 a minor?

14 A. Yes, according to the papers.

15 Q. All right. And because of that, your immigration
16 situation when you were arrested coming into the country was
17 worse than his because there was more of a chance of
18 deportation because your papers identified you as an adult?

19 A. Yes.

10:34AM 20 Q. All right. And ever since -- you've never obtained legal
21 documentation in this country, have you?

22 A. Not yet.

23 Q. All right. And is it fair to say that you have become
24 more fearful of being deported in the past six months?

25 MR. MACKINLAY: Objection.

1 THE COURT: Overruled.

2 A. No.

3 Q. Do you have concerns that one day you may be in the wrong
4 place at the wrong time and somebody from immigration may ask
5 you some questions?

6 A. No.

7 Q. Do you have any fear about what's going to happen or what
8 could happen when it's time for your oldest child to go to
9 kindergarten?

10:36AM 10 A. No.

11 Q. El Salvador is a country with tremendous poverty?

12 A. Yes.

13 Q. It's a country where women in particular have very
14 difficult lives?

15 A. Yes.

16 Q. Can you explain that to the jury, some of the things that
17 make life so difficult for women there?

18 A. In El Salvador?

19 Q. Yes.

10:37AM 20 A. Like life is difficult?

21 Q. If you could just explain and give some examples of why
22 for women especially life there is very hard.

23 A. Because there aren't many jobs for people.

24 Q. And it's a very violent country?

25 A. Yes.

1 Q. Particularly violence against women?

2 A. Yes.

3 Q. Which the police do very little about?

4 A. The police does help but sometimes not enough.

5 Q. It's a place where young boys have very little choice
6 about joining a gang?

7 A. Sometimes the gangs force them to become gang members.

8 Q. And for many young boys, the real choice, the only choice
9 for them is picking which gang they want to belong to but not
10 staying out of it altogether?

10:38AM

11 A. Sometimes, yes; sometimes, no. Sometimes they do it for
12 pleasure.

13 Q. It's not a life you want for your son?

14 A. No.

15 Q. Are you employed now?

16 A. Not right now.

17 Q. It's difficult for you to find work?

18 A. Yes.

19 Q. And one of the reasons it's difficult to find work is
20 because you don't have legal documentation?

10:39AM

21 A. Yes.

22 Q. And even if you could find work, you know that people in
23 your situation are underpaid?

24 A. Yes.

25 Q. Because of how little choice you have?

1 A. Yes.

2 Q. And being able to work here legally would allow you to
3 live a better life and would allow you to give your children a
4 better life?

5 A. Yes.

6 Q. Now, you were contacted by law enforcement in September,
7 less than a couple of months ago; is that right?

8 A. Which law?

9 Q. By police or prosecutors involved in this case?

10:40AM 10 A. They weren't, I don't recall that.

11 Q. The first time that you met and were interviewed by a
12 prosecutor in this case was in late September; is that right?

13 A. I don't remember, but what do you mean by interviewed?

14 Q. You know this gentleman, Mr. MacKinlay, you've seen him
15 before the trial?

16 A. Yes.

17 Q. And was the first time that you met him in late September?

18 A. No.

19 Q. When was the first time?

10:41AM 20 A. It was later than that, but I don't recall.

21 Q. All right. So only like a month or two ago?

22 A. I think one month.

23 Q. Okay. And you were interviewed by him and by others?

24 A. Yes.

25 Q. Okay. And is that the first time you met him when there

1 was an interview?

2 A. What do you mean by interview?

3 Q. They asked you questions?

4 A. Yes.

5 Q. Okay. And how were you contacted before the interview so
6 that you found out that they were interested in talking to you?

7 A. Over the phone.

8 Q. And they told you, what was it, was it Mr. MacKinlay that
9 talked to you on the phone?

10:43AM 10 A. No.

11 Q. Who was it?

12 A. It was somebody else.

13 Q. A police officer?

14 A. Yes.

15 Q. All right. And they told you that they were interested in
16 talking to you concerning this case?

17 A. Yes.

18 Q. And that they would come to wherever you were to meet with
19 you?

10:43AM 20 A. No, I said I would come.

21 Q. Okay. And when you met with them, there was Mr. MacKinlay
22 and a police officer and an interpreter?

23 A. No, there were only two people.

24 Q. Was there an interpreter?

25 A. Yes.

1 Q. And two more people?

2 A. Yes.

3 Q. And who were those two people?

4 A. It was the interpreter, it was him, and it was another
5 policeman.

6 Q. And one of the troopers also spoke Spanish, right?

7 A. Yes.

8 Q. Okay. And you were told that they wanted your help?

9 A. No, I offered it.

10:45AM 10 Q. Did they tell you that they understood the situation you
11 were in?

12 A. No. First I said I would help them, and then I didn't
13 want to because I got scared, and then they sent me a paper.

14 Q. I'm sorry, they said what?

15 A. A paper, a subpoena to come here.

16 Q. Okay. In the meeting, did anyone tell you that they
17 understood the situation you were in and that they would try to
18 help you?

19 A. They told me they would protect me so that nothing would
10:46AM 20 happen to me.

21 Q. All right. And they told you that they already knew
22 everything that had happened, they didn't need you to tell them
23 anything they didn't already knew, did they tell you something
24 like that?

25 A. No.

1 Q. Did they tell you that they would know if you lied to them
2 because they already knew everything?

3 A. No, they didn't say that.

4 Q. Did they tell you that they knew that Tremendo had come to
5 Chelsea to be a leader of the clique?

6 A. No.

7 Q. They didn't say they knew that?

8 A. No.

9 Q. Did they tell you that they knew that Tremendo had
10:47AM 10 communicated with gang leaders in El Salvador?

11 A. No.

12 Q. Did they tell you that they wanted you to confirm for them
13 things that they knew already?

14 A. No, I told them what had happened.

15 Q. Did they tell you that if you told them the truth, they
16 could help you?

17 A. To help me how?

18 Q. Did they tell you that they could help make sure that you
19 would not be charged with any crimes?

10:48AM 20 A. No, I was told that later.

21 Q. Did they tell you that they could try to help make sure
22 that your children grew up in the United States?

23 A. No, I did not ask for that.

24 Q. You mentioned that you received a subpoena to come here?

25 A. Yes.

1 Q. But the truth is you would have come here whether you were
2 subpoenaed or not because what you're doing here is very
3 important for you?

4 A. No, because if I didn't know, I wouldn't have come.

5 Q. But you did know, you knew there was a trial?

6 A. I didn't know about his case, I knew that he had been
7 charged, but I didn't think he was still in the case.

8 Q. But once you found out that there was a trial and that you
9 could be a witness, it was important for you to come here
10:50AM 10 whether you were subpoenaed or not?

11 A. Yes.

12 Q. Because by coming here and testifying, you're making it a
13 lot more likely that your children are going to grow up in this
14 country?

15 A. No, because I didn't realize that they could help me with
16 that.

17 Q. When you first came into the country, Rafael was put into
18 a foster care home, right?

19 A. Yes.

10:51AM 20 Q. And you have a brother in Michigan, correct?

21 A. Yes.

22 Q. And your brother's family helped get Rafael out of foster
23 care and move to Michigan?

24 A. Yes, his mother called him to help.

25 Q. And when he got to Michigan, he tried to find work?

1 A. Yes.

2 Q. And he found work mostly doing painting?

3 A. Yes.

4 Q. And, in fact, you mentioned that on April 16th, the day of
5 the shooting, he was wearing white pants?

6 A. Yes.

7 Q. And those were painter's pants?

8 A. Yes.

9 Q. Because he had been working that same day painting?

10:52AM 10 A. Yes.

11 Q. In fact, he was working at a job painting when he got a
12 call from you about being chased?

13 A. He had already gotten off of work.

14 Q. You did call him and tell him that you had been chased?

15 A. I told him -- I sent him a message saying that I was there
16 and we had been followed.

17 Q. Can you read English?

18 A. No.

19 Q. I'm going to ask that this be translated for you.

10:53AM 20 A. Okay.

21 THE COURT: Is it a 302?

22 MR. HALPERN: Pardon.

23 THE COURT: Is it a 302?

24 MR. HALPERN: It's not a 302, it's a State Police
25 report.

1 THE COURT: Why don't you do it up here at the
2 sidebar.

3 MR. HALPERN: Can she see the screen?

4 THE COURT: Why don't you do it mechanically, in other
5 words, without the screen.

6 Q. So this is a report from the interview: "They were
7 walking by Polo Com Paro when two 18th Street members, one she
8 knew as Javier began to chase them. She stated that the
9 18th Street members recognized Rosemary as an MS-13 girl.

10:54AM 10 Rosemary called Cuervo to see where he was located. She then
11 texted Aguirre, Aguirre told her he would go pick her up." Is
12 that an accurate statement as to what you told Mr. MacKinlay
13 and the police?

14 A. Yes.

15 Q. Rafael had a hard time making decent money doing painting
16 work in Michigan?

17 A. Yes.

18 Q. And when you made the decision to move to Chelsea, you
19 understood that he had been promised work as a painter with
10:55AM 20 Cuervo's father who ran a painting business?

21 A. He got the job here.

22 Q. Okay. And one of the reasons that you knew he wanted to
23 come here was because he thought he could make better money
24 working?

25 A. He was going to earn the same thing because the rent over

1 there was cheaper, so it would all work out the same.

2 Q. Gallito and Bravo, who came with you, they had family here
3 in the Boston area?

4 A. Only Gallito, I believe he had an uncle.

5 MR. HALPERN: I have a document, which is a ticketing
6 record. This has been by agreement, I'd like to offer this as
7 Exhibit 281.

8 THE COURT: 281. All right. It's admitted, 281.

9 (Exhibit No. 281 received into evidence.)

10:57AM 10 Q. This is a ticketing record from American Airlines, which
11 merged at some point with U.S. Air, and I'm going to ask
12 you -- can we go up on the screen? This is your full name, is
13 that Vicky Eullalia Martinez Chacon?

14 A. Yes.

15 Q. And the flight, tell me if this is consistent with your
16 memory of when you came here, that you flew from Detroit on
17 March 24th, 2014?

18 A. Yes.

19 Q. And the names, the real names of the others that came were
10:59AM 20 Pineda and Ayala?

21 A. Yes.

22 Q. And you were picked up at the airport at Logan by Cuervo,
23 Hector Ramires?

24 A. Yes.

25 Q. And he's the one whose father owned the painting business?

1 A. Yes.

2 Q. The rap songs that Rafael made in Michigan, when you
3 arrived in Massachusetts, did he try to take those down off of
4 YouTube?

5 A. Yes.

6 Q. He told you he couldn't figure out how to do it, right?

7 A. He wanted to take them down because he had been scolded by
8 the gang in El Salvador.

9 Q. And did he tell you that he couldn't figure out how to get
10 them down?
11:00AM

11 A. Yes.

12 Q. Did he ask you to try to help figure out how to get them
13 off YouTube?

14 A. No, I couldn't do it.

15 Q. This was right after you got here?

16 THE COURT: Whenever you're ready to pause.

17 A. Yes, after.

18 MR. HALPERN: It's a good time.

19 THE COURT: Okay. We'll take a break.

11:01AM 20 THE CLERK: All rise.

21 (JURORS EXITED THE COURTROOM.)

22 MR. MacKINLAY: I understand she's on
23 cross-examination. I would like permission to inquire
24 concerning a nursing issue we had discussed, whether it
25 required --

1 THE COURT: Fine. She's got a one-month old.

2 MR. HALPERN: I'm fine with whatever they want to do.

3 MR. PASRICHA: If a break is needed, we also have
4 another witness we can use.

5 MR. MACKINLAY: She doesn't need a break, your Honor.

6 THE COURT: What I'd like to do when we come back, I'm
7 going to ask if we can go straight through just to try to gain
8 some of that time back.

9 THE CLERK: All rise.

11:19AM 10 (A recess was taken.)

11 THE CLERK: All rise for the jury.

12 (JURORS ENTERED THE COURTROOM.)

13 THE CLERK: Thank you. You may be seated. Court is
14 back in session.

15 THE COURT: Ladies and gentlemen, what I would like to
16 do is go straight through until one to try to make up the time,
17 if we can. If anyone can't go that long, raise your hand.

18 Go ahead.

19 Q. I want to ask you about the incident with the machete on
11:20AM 20 April 6th, 2014. Mr. MacKinlay asked you several questions in
21 which he referred to this event happening in the evening. You
22 remember those questions?

23 A. It was in the afternoon.

24 Q. Right. You were actually going for lunch, right?

25 A. Yes.

1 Q. To a restaurant that both of you liked, Sabor Centro
2 Americano?

3 THE INTERPRETER: I'm sorry?

4 Q. Sabor Centro Americano.

5 A. Central American.

6 Q. And to walk there from your home, you went through a park?

7 A. Yes.

8 Q. Now, you did not go out for walks with Rafael around

9 Chelsea hoping to find 18th Street kids to get into fights

11:21AM 10 with?

11 A. No.

12 Q. Your plan that day was to go somewhere to get something to
13 eat?

14 A. Yes.

15 Q. And you saw two guys walking in your direction as you were
16 going through the park?

17 A. Yes. They were walking.

18 Q. And Rafael told you as they were coming in your direction
19 to be careful and come closer to him?

11:22AM 20 A. No, he just started saying things to him when he saw him.

21 Q. They were wearing shoes that had red on them?

22 A. Yes.

23 Q. And they had some red clothing?

24 A. I don't recall.

25 Q. But based just on the way they looked, it was clear that

1 Rafael thought that they might be 18th Street?

2 A. He recognized them because he had seen photos.

3 Q. Well, did he tell you that like he turned to you and said
4 I recognize those guys because I've seen photos?

5 A. No, he just directly started talking to them.

6 Q. And at that point, you only had been here in Chelsea, this
7 is on the 6th, you flew in on the 22nd?

8 THE COURT: I thought it was the 24th.

9 Q. 24th, I'm sorry. You had been here for about 11 days?

11:24AM 10 A. Yes.

11 Q. You weren't hanging around with 18th Street kids during
12 that 11 days --

13 THE INTERPRETER: I'm sorry, could you repeat the
14 question?

15 Q. You personally were not hanging around 18th Street kids
16 during those 11 days?

17 A. No.

18 Q. No. And if you saw 18th Street kids, you'd stay away from
19 them?

11:24AM 20 A. Yes.

21 Q. And you weren't studying these Facebook pictures to try to
22 memorialize the names of the 18th Street kids?

23 A. No.

24 Q. But you see as coming towards you an 18th Street kid named
25 Christian?

1 A. Yes, because he's the one I saw when he hit him with the
2 machete.

3 Q. Christian?

4 A. Yes.

5 Q. Did the prosecutor or the police tell you that the guy who
6 got hit with the machete was named Christian?

7 A. No.

8 Q. You just knew walking towards you 11 days after you got
9 here that the kid walking, one of these kids walking towards
10 you was Christian?

11:25AM

11 A. Because Tremendo said it.

12 Q. He knew after 11 days, he recognized this kid as
13 Christian?

14 A. Yes.

15 Q. And he said, oh, there's Christian?

16 A. No, he just said it, and then he said to the guy that he
17 was Christian and what was he called.

18 Q. And three and a half years later after this incident
19 occurs, you're interviewed by the prosecutor and the police,
20 and you tell them that the guy with the knife who got hit with
21 the machete was named Christian, that's what happened?

11:26AM

22 A. Yes.

23 Q. Because the report of this interview, tell me if this is
24 consistent with what you remember, is that you told them that
25 this guy's name was Christian?

1 A. Yes.

2 Q. That you remembered three and a half years later?

3 A. Yes.

4 Q. Okay. And as they come closer to you, is it true that one
5 of them says something like, "Look at that piece of shit, he
6 has a good-looking girl with him?"

7 A. No.

8 Q. Did one of them make an 18th Street sign with his hand?

9 A. No.

11:28AM 10 Q. Did Rafael say to one of them something like, "What did
11 you say to me? Say it to my face."

12 A. No, he just said, "What's up, buchona?"

13 Q. You may have saved his life that day; is that right?

14 A. No.

15 Q. One of them pulled out a knife, and you saw it before
16 Rafael did?

17 A. No, only Christian took out a knife.

18 Q. You used a nickname often with Rafael, "negro;" is that
19 right?

11:28AM 20 A. Yes.

21 Q. And when you saw a kid pull out a knife, you yelled out to
22 him "negro"?

23 A. No.

24 Q. Did you push the guy that had the knife?

25 A. No, I was just to one side.

1 Q. Did you push one of them?

2 A. No.

3 Q. Did you see that both of them had knives?

4 A. I only saw that one had a knife.

5 Q. And did you see him lunge at Rafael and cut his shirt?

6 A. No.

7 Q. Rafael pulled out a machete after this guy pulled out a
8 knife?

9 A. No, he pulled it out before that.

11:30AM 10 Q. They pulled it out at the same time?

11 A. Yes.

12 Q. And the kid with the knife doesn't back off, right?

13 A. No.

14 Q. And, in fact, he says to Rafael, "You're a pussy and
15 you're not going to use that?"

16 A. No, he didn't say that.

17 Q. Did he come at Rafael with the knife?

18 A. Both of them had a fight.

19 Q. And once this guy got hit with the machete, he stopped
11:31AM 20 fighting?

21 A. Yes.

22 Q. And he went and sat on the ground?

23 A. Yes.

24 Q. So, at that point he was helpless?

25 A. No.

1 Q. He wasn't helpless?

2 THE INTERPRETER: Sorry for the translation. Could
3 you repeat the question?

4 Q. Yes. At the point he's sitting on the ground, he could
5 not defend himself, correct?

6 A. No.

7 Q. You're agreeing with me that he couldn't defend himself?

8 A. Who?

9 Q. The kid that's on the ground after he gets hit with the
11:31AM 10 machete, do you agree with me that at that point he couldn't
11 defend himself?

12 A. Yes.

13 Q. And at that point Rafael walks away?

14 A. Yes.

15 Q. Okay. And the two of you go back to the house?

16 A. Yes.

17 Q. After that day in the park, did you see these two guys
18 again?

19 A. After Tremendo was in jail, I saw him again.

11:32AM 20 Q. Did they try to attack you?

21 A. No.

22 Q. The shooting incident was a week later?

23 A. Yes, about a week or before, something like that.

24 Q. All right. And in the interview that you had with
25 Mr. MacKinlay and the trooper, you told them, at least

1 according to the report, that the name of one of the 18th
2 Street guys, the guy that got shot was Javier. Did you say
3 that during the interview?

4 A. Yes.

5 Q. So you remembered that, too, three and a half years later,
6 you remembered the name of an 18th Street that got shot that
7 day?

8 THE INTERPRETER: I'm sorry, could I just add that I
9 didn't translate the part that she had said the name was
10 Javier.

11:34AM

11 A. Yes.

12 Q. All right. So three and a half years later when you were
13 interviewed, you remembered that the name of the kid that got
14 shot was Javier?

15 A. Yes, and he was called Papelito.

16 Q. And were you, in fact, chased?

17 A. Supposedly they were following us.

18 Q. So what did you think they were going to do to you if they
19 had caught you?

11:35AM

20 A. I don't know.

21 Q. Were you afraid?

22 A. Yes.

23 Q. And that's why you called Rafael?

24 A. I told him I was there.

25 Q. After Rafael was arrested, you continued to live in the

1 same apartment?

2 A. Yes.

3 Q. For how long?

4 A. I don't remember, but it was several months.

5 Q. And were there days when you would look outside your

6 window and see 18th Street kids hanging around?

7 A. No.

8 Q. Did you ever walking around the streets feel like you were

9 in danger from 18th Street kids who knew that you were his

11:36AM 10 girlfriend?

11 A. Yes.

12 Q. You went to see Rafael in jail pretty much every week for

13 a long time, didn't you?

14 A. Yes.

15 Q. And sometimes more than once a week?

16 A. Sometimes.

17 Q. And right away after his arrest, he told you to tell the

18 guys in the Chelsea gang that the gang was over and that they

19 should end it?

11:36AM 20 MR. MACKINLAY: Objection.

21 THE COURT: Let me see counsel.

22 (THE FOLLOWING OCCURRED AT SIDEBAR:)

23 THE COURT: Why does this come in?

24 MR. HALPERN: That he's withdrawing, he doesn't learn

25 anything more about the gang, he tells her to tell David Lopez

1 that he's out, he doesn't want any more involvement, and he
2 tells her.

3 THE COURT: Okay. Why is it not hearsay? Give me an
4 evidentiary explanation as to why it comes in. In other words,
5 it's his own private statement that you're eliciting, so why
6 does it come in?

7 MR. HALPERN: Well, I think the circumstances are
8 credible, and she acted on it. She goes to Lopez and tells
9 Lopez that he wants out.

11:37AM 10 THE COURT: Well, you've got to fit me within a rule
11 here. Is it his then existing intent, mental; is that --

12 MR. HALPERN: I don't know how you would withdraw from
13 a conspiracy absent evidence that you communicated its
14 withdrawal, so he communicated it through her, he tells her --

15 THE COURT: Well, this isn't close to withdrawal, but
16 anyway, it's a legal matter. I need to fit this in an
17 evidentiary pigeonhole for it to come in. Give me the
18 pigeonhole.

19 MR. HALPERN: Okay. Let me just think for a minute.
11:38AM 20 It's obviously being admitted for the truth of the matter
21 asserted. I think I've just got to go sort of the fallback on
22 general credibility as a hearsay exception.

23 THE COURT: I'm not going to admit it on, you know,
24 sort of a hearsay exception. I don't think it has the indices
25 of credibility that it might otherwise have, but you say that

1 she relied on it and she did X. What is X that she did?

2 MR. HALPERN: She went to David Lopez and told him
3 that Rafael wanted out and that he wanted the gang to disband
4 and that he did not want to be involved anymore, and she
5 communicated that to Lopez.

6 THE COURT: And did Lopez give a response?

7 MR. HALPERN: Lopez told her to tell Rafael, okay.

8 MR. MACKINLAY: Your Honor --

9 THE COURT: Yes, go ahead.

11:39AM 10 MR. MACKINLAY: -- I don't think we even have to
11 entertain this outside the presence of the jury because I think
12 the witness is going to deny all that.

13 MR. HALPERN: She may.

14 THE COURT: The first question is whether there's a
15 good faith basis for the question. I'm going to assume the
16 answer is yes for these purposes, but could it not be a
17 statement of his intent, this is my then existing state of
18 mind, my intent, and offered for that purpose only.

19 MR. HALPERN: Yes, thank you.

11:40AM 20 THE COURT: All right. I'm going to allow the
21 question on that basis, and if she says yes, I'm going to give
22 the jury a limiting instruction as to what they can consider it
23 for.

24 (SIDEBAR CONFERENCE WAS CONCLUDED)

25 THE COURT: Why don't you put the question to the

1 witness again.

2 MR. HALPERN: Thank you.

3 Q. After Rafael's arrest, did he ask you to tell guys in
4 Chelsea and in particular David Lopez that he wanted out and
5 that they should end the gang?

6 A. No.

7 Q. Did you deliver for Rafael a message to David Lopez about
8 what Rafael wanted?

9 MR. MACKINLAY: Objection.

11:41AM 10 THE COURT: Overruled.

11 A. No. Perhaps he sent him letters.

12 Q. Did you talk to David Lopez about whether or not Rafael
13 wanted any involvement in the gang -- after his arrest, after
14 Rafael was arrested -- David Lopez is Cilindro, you know that,
15 right?

16 A. Yes.

17 Q. Okay. And after Rafael was arrested, did Cilindro become
18 the leader?

19 A. Yes.

11:42AM 20 Q. All right. And you saw that. You saw that yourself when
21 you observed these kids that after Rafael was arrested, his
22 position as leader was taken over by Cilindro?

23 A. Cilindro said that, but I didn't see it.

24 Q. And did the other kids treat him like he was the leader?

25 A. I don't know because I didn't live there afterwards.

1 Q. All right. And you didn't see Rafael do anything after
2 his arrest to indicate that he was still a leader?

3 A. No.

4 Q. Okay. So, I want to go back to the question I asked
5 before. Did you ever have a conversation with David Lopez,
6 with Cilindro, about Rafael wanting out of the group?

7 A. It was only that they heard rumors, that Cilindro heard
8 rumors that he didn't want that.

9 Q. That Rafael didn't --

11:44AM 10 THE COURT: Hold on.

11 MR. MACKINLAY: Objection. Strike the answer.

12 THE COURT: I'm going to strike the answer, and the
13 jury will disregard it.

14 Q. You talked to Cilindro about rumors that Cilindro had
15 heard?

16 A. Yes.

17 Q. Okay. And the rumors that Cilindro asked you about were
18 that Rafael wanted out of the group?

19 MR. MACKINLAY: Objection.

11:44AM 20 THE COURT: I'll allow this, but let me explain
21 something to the jury. Sometimes there's a legal concept
22 called hearsay, and it's a statement out of court made for its
23 truth, and let me give you an example.

24 If someone came in the back of the courtroom and said
25 you have to evacuate, the building is on fire and everyone

1 evacuated, that's not really evidence that the building is on
2 fire, but if somebody asked you to evacuate, it's because
3 somebody told me this, all right. You don't know whether the
4 building is on fire, you were told something, and you reacted,
5 so it's not proof that the building is on fire, but it matters
6 because something happened as a result.

7 So this question is assuming the existence of rumors
8 or possibly passing on rumors. That's not evidence that
9 whatever this rumor is is true, it's evidence of a
10 conversation. Go ahead.

11:45AM

11 Q. So the question I wanted to ask you is whether Cilindro
12 spoke to you about rumors that he had heard that Rafael wanted
13 out?

14 A. Yes, but Tremendo said that that was his family, that he
15 would never leave.

16 Q. After he was arrested, some of the members of the group
17 did stop involvement?

18 A. Yes.

19 Q. Bravo stopped being involved, and he was hanging out in
20 Everett?

11:46AM

21 A. I don't know about that. All I found out, all I heard was
22 that they had been arrested, and I don't know if they got out
23 or not.

24 Q. Smiley or Chucky, you know who he is, Bryan Barillas
25 Galicia?

1 A. Yes.

2 Q. Okay. He moved away, he moved out of Chelsea altogether,
3 he went to Texas?

4 A. Yes.

5 Q. The group from the time that you arrived in Chelsea until
6 the time the group ended, the size of the group never changed,
7 it was the same kids from the time you came until the time you
8 left?

9 A. No.

11:48AM 10 Q. No.

11 MR. HALPERN: Do we have the chart?

12 Q. Yesterday you were shown a blow-up of this. All of these
13 guys were part of the group from the time you arrived, Bravo
14 and Gallito came with you, the others were already part of the
15 group, and then in addition, there was Clacker and Blanquito,
16 and they were all part of it?

17 THE COURT: Let me ask you, for the benefit of the
18 translator, can you break that up? You're asking very long
19 questions.

11:49AM 20 MR. HALPERN: I'm sorry.

21 Q. All of the people pictured here were part of the group
22 from when you arrived?

23 A. Yes.

24 Q. And, in addition, Blanquito, Josue Morales, and Clacker,
25 Christian Henriquez also were part of the group when you

1 arrived?

2 A. Yes.

3 Q. And these were the same people who were involved in the
4 group when Rafael went to jail?

5 A. Yes.

6 Q. The gang didn't grow while he was in Chelsea?

7 A. Yes.

8 Q. He didn't recruit anybody?

9 A. No. He didn't have enough time.

11:50AM 10 MR. HALPERN: Thank you. That's all I have.

11 THE COURT: Redirect.

12 MR. MACKINLAY: No questions, your Honor.

13 THE COURT: All right. Thank you, you may step down.

14 MR. PASRICHA: The United States calls Martinez.

15 IRWIN MARTINEZ, having been duly sworn by the Clerk,
16 testified as follows through the interpreter:

17 DIRECT EXAMINATION

18 BY MR. PASRICHA:

19 Q. Good morning, sir.

11:52AM 20 A. Good morning.

21 Q. Can you please introduce yourself to the jury and spell
22 your last name for the record.

23 A. Irwin Martinez, E-r-n-i --

24 Q. Irwin, is the English spelling I-r-w-i-n?

25 A. Yes.

1 Q. How old are you, Mr. Martinez?

2 A. Twenty-eight.

3 Q. What city do you live in?

4 A. Chelsea.

5 Q. And how long have you lived in Chelsea?

6 A. Seven years.

7 Q. Do you work?

8 A. Yes.

9 Q. What kind of work do you do?

11:53AM 10 A. Construction.

11 Q. What kind of hours do you keep when you work your
12 construction job?

13 A. 6 a.m. to 4 p.m.

14 Q. You do that every day?

15 A. Every day.

16 Q. I want to remind you about -- I want to take you back to
17 April 9th, 2014. Where were you living at that time?

18 A. At 33 Spencer.

19 Q. And what city is 33 Spencer in?

11:54AM 20 A. Chelsea.

21 Q. Showing you a map --

22 MR. PASRICHA: Your Honor, it's marked 121.1 for
23 identification. Your Honor, I'm just marking it as a chalk, so
24 I don't know if the jury can see that as well.

25 THE COURT: Yes, they can see it.

1 MR. PASRICHA: Thank you.

2 Q. Is that a general area of where you lived at that time at
3 33 Spencer Ave.?

4 A. Yes.

5 Q. And do you recognize this area as the intersection where
6 you live?

7 A. Yes.

8 THE COURT: That's 121.3, you just showed them?

9 MR. PASRICHA: Yes. Thank you, your Honor.

11:55AM 10 Q. I'm showing you what's been marked as 121.4. Do you
11 recognize that?

12 THE COURT: Hold it. This is not in evidence,
13 correct?

14 MR. PASRICHA: Correct.

15 THE COURT: So the jury can't see it. Are you going
16 to show a series of photographs?

17 MR. PASRICHA: Two more.

18 MR. HALPERN: I have no objection.

19 MR. PASRICHA: I can move them, if needed.

11:55AM 20 THE COURT: 121.4.

21 MR. PASRICHA: I'll move in for the record 121.1
22 through 121.5.

23 THE COURT: Is there any objection?

24 MR. HALPERN: No.

25 THE COURT: They're all admitted, 121.1 through 121.5.

1 (Exhibit Nos. 121.1 through 121.5 received into
2 evidence.)

3 Q. Do you recognize that?

4 A. Yes.

5 Q. And what is that house we're looking at?

6 A. It is my sister's house.

7 Q. And is that the house you were living at in April, 2014?

8 A. Yes.

9 Q. Who else were you living with at that time in that house?

11:56AM 10 A. With my mother, my two nephews, and my two sisters.

11 Q. Did you go to work that day?

12 A. Yes.

13 Q. What kind of work did you go do that day?

14 A. Construction.

15 Q. And approximately what time did you come home from work
16 that day?

17 A. It was a little bit dark already.

18 Q. So in the evening?

19 A. Around the evening.

11:56AM 20 Q. And when you came home, tell the jury what happened once
21 you walked towards your house.

22 A. I got out of work, I was on my way home, my sister told me
23 to check on my nephew, so I went and sat down on the steps. I
24 checked my phone.

25 Q. Thank you. That's helpful. I asked a poor question, so

1 let me break that up. This is the sister you lived with; is
2 that correct?

3 A. Yes.

4 Q. And so when you came home while you were still outside,
5 did she tell you to wait for your nephew?

6 A. Yes.

7 Q. And where was your nephew that you were waiting for?

8 A. He had gone to pick up homework from school.

9 Q. I believe you started to say that you decided to sit down
11:58AM 10 to wait for him. Where did you sit?

11 A. On the steps.

12 Q. I'm putting back up what was introduced as Exhibit 121.4.
13 Are those the steps that you were sitting on?

14 A. Yes.

15 Q. And what were you doing when you decided to sit on the
16 steps?

17 A. Checking my phone.

18 Q. What kind of phone was it?

19 A. A Samsung.

11:58AM 20 Q. And what were you doing with the phone?

21 A. Playing.

22 Q. Like playing a game or something?

23 A. Yes.

24 Q. And what happened next? What do you remember happening
25 next?

1 A. Suddenly, as I was sitting on the stairs, I saw two
2 subjects come near me and pointed two guns at me.

3 Q. Did you see them as they were walking up to you?

4 A. No.

5 Q. You were looking down at your phone; is that correct?

6 A. Yes.

7 Q. And so when was the first time you noticed the two people
8 with the guns?

9 A. When they were pointed at me.

12:00PM 10 Q. What happened after you looked up from your phone and saw
11 people pointing guns at you?

12 A. I asked what was going on.

13 Q. And how did they respond?

14 A. They just were pointing at me, and I was nervous.

15 Q. Did they -- did you recognize either of the two people who
16 pointed guns at you?

17 A. Since I was nervous, I don't remember.

18 Q. Well, do you recognize -- did you recognize one of the
19 people from the neighborhood?

12:01PM 20 A. Not very well.

21 Q. Did you hear the two people talking to each other?

22 A. Yes.

23 Q. And what did you hear them saying?

24 A. One was saying to the other that I was going to die here.

25 Q. After you heard them say that, did they ask you any

1 questions?

2 A. They took my shirt off.

3 Q. Did they tell you why they took your shirt off?

4 A. To see if I had tattoos.

5 Q. Did they ask you if you were in a gang?

6 A. Yes.

7 Q. What did you say?

8 A. That I was not a gang member.

9 Q. Are you in a gang, sir?

12:02PM 10 A. No.

11 Q. Have you ever been in a gang?

12 A. No.

13 Q. What country were you born in?

14 A. In El Salvador.

15 Q. In El Salvador, were you ever in a gang?

16 A. No.

17 Q. When you told them you weren't in a gang, did they believe
18 you?

19 A. No.

12:02PM 20 Q. So was it after that, after you told them that you weren't
21 a gang member, is that when they asked you to lift your shirt
22 to show whether you had tattoos or not?

23 A. Yes.

24 Q. Is there anything else you remember them saying to each
25 other while they were checking you for tattoos?

1 A. Only that one was saying to the other we're going to kill
2 him here.

3 Q. After they saw that you didn't have a tattoo or tattoos
4 and after you told them that you weren't a gang member, what
5 did they do?

6 A. They took my phone.

7 Q. What else?

8 A. And my wallet.

9 Q. Did they take the money from your wallet?

12:04PM 10 A. Yes.

11 Q. And what happened next?

12 A. Afterwards, they left.

13 Q. Is the house you were living at, did that have any
14 surveillance cameras?

15 A. There are four cameras.

16 Q. And is one of the cameras pointed right at the area where
17 you were sitting?

18 A. Yes.

19 Q. I'm going to show you what was 121.5. Is that one of the
12:05PM 20 cameras on the top left above near the door?

21 A. Yes.

22 Q. Was anyone inside the house at the time that you were
23 being robbed?

24 A. My sister was inside.

25 Q. Did your sister happen to be watching the cameras as you

1 were being robbed?

2 A. Yes.

3 Q. Did she call the police while you were being robbed?

4 A. Yes.

5 Q. After you were robbed, did you go back into the house?

6 A. Yes.

7 Q. By the time you went into the house, had your sister
8 already called and was she already on the phone with 9-1-1?

9 A. Yes.

12:06PM 10 MR. PASRICHA: Your Honor, I'd seek to move 912, it's
11 the 9-1-1 call to the Chelsea Police.

12 MR. HALPERN: No objection.

13 THE COURT: It's admitted, 122.

14 (Exhibit No. 122 received into evidence.)

15 MR. PASRICHA: There is a transcript in the transcript
16 binder for the jury, but if we can play 122T, I believe it will
17 play both the tape and the scrolling text, if it helps.

18 THE COURT: I don't think there's a transcript, at
19 least not in my binder.

12:07PM 20 MR. PASRICHA: 122 is the call, 123 is the transcript.

21 THE COURT: And is the transcript a chalk? Are you
22 offering it?

23 MR. PASRICHA: We can offer it in unless there are
24 objections.

25 THE COURT: Are you offering 123?

1 MR. PASRICHA: We'll offer it into evidence.

2 MR. HALPERN: We don't object.

3 THE COURT: 123.

4 MR. PASRICHA: If I may publish for the jury what
5 we'll call 122T, which is the scrolling transcript over the
6 audio of the 9-1-1 call.

7 THE COURT: All right.

8 (Video played.)

9 Q. Was that your sister whose voice we heard first?

12:11PM 10 A. Yes.

11 Q. And towards the end, we hear a male voice in the
12 background clarifying that the men were Hispanic. Was that
13 your voice?

14 A. That's me.

15 Q. And is that generally how -- is that -- is what's
16 described on the tape generally how that incident occurred as
17 you remember it?

18 A. Yes.

19 Q. Except that the men didn't come into the house, there was
12:12PM 20 a translation issue, right, they were just outside, robbed you
21 and went away?

22 A. Yes.

23 Q. Have you seen since the incident the surveillance video
24 from your house that captures the incident?

25 A. No.

1 Q. Well, remember the video we saw, I guess I'm talking about
2 the video we talked about over the weekend, do you remember
3 seeing the video of yourself sitting outside the house showing
4 the robbery?

5 A. Yes.

6 MR. PASRICHA: Your Honor, I'd move into evidence
7 Exhibits 124, 125 and 126. 124 is the surveillance video, 125
8 is an excerpt from that video, and 126 are some still photos
9 from that video.

12:13PM 10 THE COURT: Any objection?

11 MR. HALPERN: No objection.

12 THE COURT: They're admitted, 124, 125 and 126.

13 (Exhibit Nos. 124, 125 and 126 received into
14 evidence.)

15 MR. PASRICHA: Your Honor, may we publish for the jury
16 125? That's an excerpt of the video.

17 THE COURT: Yes.

18 "Publish" is a lawyer word, ladies and gentlemen. It
19 means "show."

12:13PM 20 Q. I'm going to pause it while I talk to you about that. Is
21 that you, sir, sitting on the bottom right playing on your
22 phone?

23 A. Yes.

24 Q. There were two men in here, one on the left and one on the
25 right, and only one is on the screen where I froze it on the

1 left. There's a person on the right who's also pointing a gun
2 at you; is that correct?

3 A. Yes.

4 Q. Which of the two men was asking permission or saying,
5 "Should we kill him"?

6 A. The one on the stairs.

7 Q. So the one we see right now or the one we don't see right
8 now?

9 A. The one that's on the screen right now.

12:16PM 10 Q. So the one that's on the screen, and just to clear it up,
11 I'll move it back up a little bit. The one that's on the
12 screen?

13 THE COURT: You can move the screen forward.

14 Q. So this is the start of the video, and is this the point
15 before they ask to see your tattoos where he asks, "Should we
16 kill him"?

17 THE INTERPRETER: I'm sorry, can you repeat the
18 question?

19 Q. Sure. Is this the point before they ask to see your
12:16PM 20 tattoos where this person on the left asks his partner or the
21 other person whether they should kill you?

22 A. Yes.

23 Q. Did that other person give permission or how did he
24 respond to that question?

25 A. No, he didn't answer. He kept quiet, he just said,

1 "You're going to die here."

2 Q. That's what the other person told you?

3 A. Yes.

4 Q. And is that when you told them that you were not a gang
5 member?

6 A. Yes.

7 Q. And as shown in the video, is it after that that they
8 asked you to prove it by showing whether you had gang tattoos
9 or not?

12:17PM 10 A. Yes.

11 Q. Based on what they were saying and how they were acting,
12 did you think they would have killed you if you had gang
13 tattoos?

14 A. Yes.

15 MR. PASRICHA: Nothing further, your Honor.

16 THE COURT: Cross.

17 MR. HALPERN: No questions.

18 THE COURT: All right. Thank you, you may step down.

19 MR. PASRICHA: The government calls Sean Connolly.

12:18PM 20 SEAN CONNOLLY, having been duly sworn by the Clerk,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PASRICHA:

24 Q. Good morning, sir. What's your name?

25 A. My name is Sean Connolly.

1 Q. Where do you work?

2 A. I work for Homeland Security Investigations in Boston.

3 Q. What's your title with Homeland Security Investigations in
4 Boston?

5 A. I'm a special agent.

6 Q. And Homeland Security Investigations also goes by his
7 shorthand?

8 A. Yes, it does.

9 Q. How long have you worked for his?

12:19PM 10 A. Over six years, sir.

11 Q. Do you have any prior law enforcement background as well?

12 A. Yes, I do.

13 Q. Could you just summarize that for the jury?

14 A. Prior to working with Homeland Security Investigations, I
15 worked for the Transit Police in Boston for six and a half
16 years.

17 Q. Can you summarize for the jury the duties and
18 responsibilities of a special agent with his?

19 A. Our job is to enforce the criminal statutes, criminal and
12:20PM 20 civil statutes of the United States Customs and Immigration
21 laws, statutes.

22 Q. And that's part of what you do as well?

23 A. Yes, it is.

24 Q. In connection with that work, do you also coordinate with
25 other law enforcement agencies to investigate criminal

1 activity?

2 A. Yes, I do.

3 Q. And what are some of the partner agencies that you work
4 with as part of your work?

5 A. I work with Boston Police Department, Massachusetts State
6 Police, Federal Bureau of Investigation, Alcohol, Tobacco, and
7 Firearms, Drug Enforcement Administration, Chelsea Police
8 Department, Everett Police Department, pretty much everybody in
9 the area.

12:21PM 10 Q. Are you familiar with the gang known as La Mara
11 Salvatrucha or MS-13?

12 A. Yes, I am.

13 Q. How are you familiar with them?

14 A. For the last three years, I've been working exclusively
15 targeting MS-13 and 18th Street transnational gangs.

16 Q. And what kinds of work do you do as part of your efforts
17 to target that gang?

18 A. Working on criminal investigations of those gangs.

19 Q. Through your training and experience and work targeting
12:21PM 20 that gang, have you become familiar with some of the
21 identifying characteristics of that gang?

22 A. Yes, I have.

23 Q. Just at the high level, can you tell the jury what are
24 some of the characteristics you look for when investigating
25 MS-13?

1 A. We want to look for the specific types of clothing they
2 wear, the gang apparel. You want to look for the type of
3 paraphernalia they might wear or carry with them to the
4 different types of clothing to jewelry or something like that
5 that they would carry on them, the type of weapons, the way the
6 weapons are carried on them. You want to look for if you have
7 the ability, again, gang hand signs, pretty much any indicator
8 for those gangs.

9 Q. I want to turn your attention to July, 2015. Were you
10 12:22PM working on an investigation into the MS-13 gang at that time?

11 A. Yes, I was.

12 Q. Is that the same investigation that led to the indictment
13 in this case?

14 A. Yes, it did.

15 Q. And on July 8th, 2015, in particular, were you working on
16 that date?

17 A. Yes, I was.

18 Q. Part of the work on that date, did your work take you to
19 124 Broadway in Somerville, Massachusetts?

20 12:23PM A. Yes, it did.

21 Q. What was the purpose of his and your partner agencies
22 going to that address that day?

23 A. We went to that address because it is a known MS-13
24 address or house, and we went there in search of several
25 different MS-13 gang members.

1 Q. When you arrived, were you voluntarily let into the house?

2 A. Yes, I was.

3 Q. And then based on that consent and the developing
4 situation, did you end up searching that house?

5 A. Yes, we did.

6 Q. Did you search for items that you believed were relevant
7 to the ongoing MS-13 investigation?

8 A. Yes, we did.

9 Q. Did you seize a number of items that day that you believed
10 were relevant to MS-13?

11 A. Yes, we did.

12 MR. PASRICHA: With the Court's permission, your
13 Honor, may I approach the witness?

14 THE COURT: Yes.

15 Q. I'm showing you what's marked as Exhibit 23. Do you
16 recognize that, sir?

17 A. Yes, I do.

18 Q. And what is Exhibit 23?

19 A. Blue rosary beads and white rosary beads. Those are
20 commonly carried by MS-13 gang members to identify themselves.

21 THE COURT: Hold on. The question is what is it?

22 Go ahead.

23 THE WITNESS: Sorry, your Honor.

24 Q. Blue and white rosary beads?

25 A. Yes.

1 Q. Based on your training and experience, does that have any
2 significance relative to MS-13?

3 A. Yes, those are commonly carried by MS-13 gang members to
4 identify themselves.

5 Q. Did you seize these from 142 Broadway on that day?

6 A. Yes, we did.

7 THE COURT: Didn't you say 124 Broadway?

8 MR. PASRICHA: I hope I said 142, if not, I meant 142.

9 THE COURT: 142, all right.

12:25PM 10 Q. To be clear, 142 Broadway that day, correct?

11 A. Yes.

12 MR. PASRICHA: Your Honor, I'd move Exhibit 23 into
13 evidence.

14 MR. HALPERN: Just a continuing objection on the time
15 frame for all of this.

16 THE COURT: All right. Overruled. It's admitted,
17 Exhibit 23.

18 (Exhibit No. 23 received into evidence.)

19 MR. PASRICHA: May I just briefly showing it to the
12:25PM 20 jury?

21 THE COURT: I'll give you a standing objection on that
22 basis. Go ahead.

23 MR. PASRICHA: I don't know if the Court has a
24 preference. I can hold it up or the witness can hold it up,
25 but Exhibit 23.

1 Q. Did you also seize items of clothing from that address?

2 A. Yes, we did.

3 Q. With the Court's permission, I'm showing you what has been
4 marked as Exhibit 24. Do you recognize that item, sir?

5 A. Yes, I do.

6 Q. What is Exhibit 24?

7 A. It is a Chicago Bull's hat.

8 Q. What color is the hat?

9 A. Blue.

12:26PM 10 Q. Does this item have any significance relative to MS-13?

11 A. Yes, it does.

12 Q. And what is that?

13 A. MS-13 gang members will wear a Bull's hat to identify
14 themselves. The Bull's symbol is a symbol used by MS-13, and
15 it looks similar to their devil horn's hand sign.

16 Q. And is the devil horn sign one of the MS-13 insignias or
17 logos?

18 A. It's their main logo, their main insignia.

19 MR. PASRICHA: Your Honor, I'd move Exhibit 24 into
12:26PM 20 evidence.

21 THE COURT: It's admitted, Exhibit 24.

22 (Exhibit No. 24 received into evidence.)

23 Q. With the Court's permission, I'm showing you Exhibit 25.
24 Do you recognize Exhibit 25?

25 A. Yes, I do.

1 Q. Can you describe Exhibit 25, please.

2 A. It is a blue and white hat. It has the numbers "503" on
3 it.

4 MR. PASRICHA: Your Honor, I'd move --

5 Q. Was this item also seized from 142 Broadway that day?

6 A. Yes, it was.

7 MR. PASRICHA: Your Honor, I'd move Exhibit 25 into
8 evidence.

9 THE COURT: It's admitted, 25.

12:27PM 10 (Exhibit No. 25 received into evidence.)

11 Q. Do the colors blue and white have any significance to you?

12 A. Yes.

13 Q. What is the significance of the blue and white colors?

14 A. Blue and white is the main colors for the MS-13 gang.

15 Q. Does the number "503" have any significance to you?

16 A. Yes it does.

17 Q. What is the significance of 503?

18 A. 503. Is the country code for El Salvador.

19 Q. With the Court's permission, I'm showing you what is

12:27PM 20 marked Exhibit 29. Do you recognize that?

21 A. Yes, I do.

22 Q. What is Exhibit 29?

23 A. Blue and white bandanas.

24 Q. Did you seize that day as well?

25 A. Yes, we did.

1 MR. PASRICHA: Your Honor, I'd move Exhibit 29 into
2 evidence.

3 THE COURT: It's admitted, 29.

4 (Exhibit No. 29 received into evidence.)

5 Q. What is the significance of the blue and white bandanas?

6 A. Those are also common apparel among MS-13 gang members.
7 It's the primary actual apparel to identify themselves as gang
8 members.

9 Q. With the Court's permission, I'm showing you a box
12:28PM 10 containing three separate items. We'll take them in turn. I'm
11 showing you what is Exhibit 26, what is Exhibit 26?

12 A. It's a Sterling firearm.

13 Q. What is Exhibit 27?

14 A. It is a magazine that goes to this firearm.

15 Q. What is Exhibit 28?

16 A. It is bullets that go to this firearm.

17 Q. And are Exhibits -- I want to make sure I've got the
18 numbers right. Is the firearm seized in Exhibit 26, the
19 magazine that's 27, and the bullets that are 28, were they all
12:29PM 20 seized from 142 Broadway that day?

21 A. Yes, they were.

22 MR. PASRICHA: Your Honor, I'd move 26, 27 and 28 into
23 evidence.

24 THE COURT: All right. No objection. They're
25 admitted, 26, 27, 28.

1 (Exhibit Nos. 26, 27, and 28 received into evidence.)

2 Q. Did you seize any other weapons from that address that
3 day?

4 A. Yes, we did.

5 Q. What else did you seize that day?

6 A. We seized large knives.

7 Q. Based on your experience investigating MS-13, do large
8 knives have any significance to you?

9 A. Yes, they do.

12:29PM 10 Q. What is the significance of the large knives?

11 A. MS-13 gang members commonly carry large kitchen-like
12 knives to be used in violent assaults.

13 Q. With the Court's permission, I am showing you what is
14 collectively Exhibit 22, but it's marked three separate items
15 as 22.1, 22.2 and 22.3. Do you recognize these items, sir?

16 A. Yes, I do.

17 Q. And what are these items?

18 A. Three large kitchen-like knives.

19 Q. Were those three knives also seized by his that day from
12:30PM 20 that address?

21 A. Yes, with his and the Somerville Police, yes.

22 MR. PASRICHA: Your Honor, I'd move 22, Exhibit 22,
23 the three items 22.1, 22.2 and 22.3 into evidence.

24 MR. HALPERN: No objection.

25 THE COURT: All right. They are admitted, 22.1, 22.2

1 and 22.3.

2 (Exhibit No. 22.1, 22.2 and 22.3 received into
3 evidence.)

4 MR. PASRICHA: I'd ask that the witness show each of
5 those three items in turn to the jury.

6 THE COURT: All right.

7 (Items displayed to the jury)

8 Q. Now, Agent, this third knife has a covering of some sort.
9 How would you describe that covering?

12:31PM 10 A. That is a homemade sheath.

11 Q. And is that something you have learned about and seen as
12 part of your experience investigating MS-13?

13 A. Yes, it is.

14 Q. Just for the record, your Honor, I don't believe I showed
15 the jury Exhibit 26, but that is the firearm that you seized
16 that day; is that correct?

17 A. Yes. Yes, it is.

18 Q. Finally, I'm showing you with the Court's permission, I'll
19 show approach and show you what's been marked Exhibit 21. Do
12:32PM 20 you recognize those pictures?

21 A. Yes, I do.

22 Q. What is Exhibit 21?

23 A. It is pictures of two MS-13 gang members doing MS-13 gang
24 hand signs.

25 Q. And are these pictures that were also seized from the

1 address where these MS-13 members were living?

2 A. Yes, they were.

3 MR. PASRICHA: Your Honor, I'd move Exhibit 21 into
4 evidence.

5 MR. HALPERN: No objection.

6 THE COURT: It's admitted, 21.

7 (Exhibit No. 21 received into evidence.)

8 MR. PASRICHA: Madam Clerk, may I have the Elmo,
9 please.

12:32PM 10 Q. Are those the gang signs that you're familiar with for
11 MS-13?

12 A. Yes, they are.

13 Q. And you previously talked about the Chicago Bull's hat
14 having some relevance because the horns seem similar to the
15 sign. Is that the sign you were referencing?

16 A. That's the sign I'm referencing, yes, sir.

17 Q. You indicated that you were there as part of an
18 investigation into various what you described as known as MS-13
19 members. Do you remember that?

12:33PM 20 A. Yes.

21 Q. Do you remember some of the names of some of the
22 individuals you encountered that day?

23 A. Yes.

24 Q. At that residence, where you seized these MS-13 related
25 items, did you encounter an individual named Jose' Miguel

1 Hernandez?

2 A. Yes, we did.

3 Q. Do you know the country of citizenship or place of birth
4 of Mr. Miguel Hernandez?

5 A. El Salvador, I believe.

6 Q. Is that Jose' Miguel Hernandez the same Jose' Miguel
7 Hernandez that was indicted in connection with this
8 investigation?

9 A. Yes, it was.

12:33PM 10 Q. Was Oscar Recines-Garcia also an individual you met with
11 that day?

12 MR. HALPERN: Objection.

13 THE COURT: Let me see counsel.

14 (THE FOLLOWING OCCURRED AT SIDEBAR:)

15 MR. HALPERN: My concern is that if they just list off
16 people who were indicted as part of the investigation, there's
17 an implication that they've all pled guilty except for the
18 defendant.

19 THE COURT: I agree. Why is any of this admissible?

12:34PM 20 MR. PASRICHA: Well, I would say that this morning we
21 probably talked about it because our concern was if the
22 standing objection is relevance, the relevance is that their
23 co-conspirators seized from co-conspirators houses --

24 THE COURT: There's nothing tieing this into -- you
25 know, these are just names, and the fact that they're indicted

1 is not relevant. I mean, the indictment in this context is a
2 suggestion of guilt somehow. I don't see how --

3 MR. PASRICHA: That's fine, your Honor. Part of -- I
4 literally asked the same question, I wrote down and phrased and
5 checked with Mr. Halpern about it this morning. I'm not
6 suggesting that there's --

7 MR. HALPERN: My point was the indictment. What I
8 said is that if you wanted to identify their names as people
9 who he knew as MS-13, I don't really care about that. I don't
10 think it's relevant.

12:35PM

11 THE COURT: Let's keep the indictment out, then you
12 can go through the list of names.

13 MR. PASRICHA: Yes.

14 (SIDEBAR CONFERENCE WAS CONCLUDED)

15 THE COURT: All right. Ladies and gentlemen, I'm
16 going to strike the reference to the indictment and ask you to
17 disregard it, but let's put a question to the witness,
18 Mr. Pasricha.

19 MR. PASRICHA: Thank you, your Honor.

12:35PM

20 Q. Was Jose' Miguel Hernandez one of the individuals in the
21 house that day?

22 A. Yes, he was.

23 Q. Is he a known MS-13 member in Massachusetts?

24 A. Yes, he is.

25 Q. Is Oscar Recines-Garcia an individual who was there at the

1 address that day?

2 A. Yes, he was.

3 Q. What do you know about his membership?

4 A. He's an MS-13 gang member.

5 Q. What about Manuel Diaz-Granados, do you know about him?

6 A. Yes, I do.

7 Q. What do you know about his gang membership?

8 A. He's an MS-13 gang member.

9 Q. An individual named a Josue Alexis De Paz, do you

12:36PM 10 recognize that name?

11 A. Yes, I do.

12 Q. How do you recognize that name?

13 A. He's a MS-13 gang member.

14 Q. And was he at the house where you seized these items?

15 A. Yes, he was.

16 Q. And, finally, Julio Esau Avalos-Alvarado?

17 A. Yes, I do.

18 Q. How do you recognize that name?

19 A. He's a MS-13 gang member.

12:36PM 20 MR. PASRICHA: Nothing further, your Honor.

21 THE COURT: Cross.

22 MR. HALPERN: No questions.

23 THE COURT: You may step down.

24 MR. PASRICHA: The United States called Brian Estevez.

25 BRIAN ESTEVEZ, having been duly sworn by the Clerk,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. PASRICHA:

4 Q. Good afternoon, sir. What's your name?

5 A. Brian Estevez.

6 Q. Where do you work, Mr. Estevez?

7 A. I currently work for the Massachusetts State Police.

8 Q. What is your title with the Massachusetts State Police?

9 A. Massachusetts State Police trooper.

12:38PM 10 Q. How long have you been a trooper with the Massachusetts
11 State Police?

12 A. Approximately six years.

13 Q. Do you have any prior law enforcement background?

14 A. I do. Prior to joining the Massachusetts State Police, I
15 worked for the Massachusetts Department of Corrections as a
16 corrections officer.

17 Q. What are some of your current duties and responsibilities
18 as a trooper with the Mass. State Police?

19 A. I'm currently assigned to the Massachusetts State Police
12:38PM 20 gang unit and also assigned to the FBI North Shore Gang Task
21 Force as part of the gang unit, I'm a trooper that patrols in
22 the evenings. Our area of patrol is the City of Chelsea,
23 Revere, Everett, East Boston, in that particular area, and as
24 part of the North Shore Gang Task Force, we're more focused
25 other agencies to conduct long-term investigations with the FBI

1 and other local and federal agencies.

2 Q. What are some of the other agencies involved in the
3 North Shore Gang Task Force?

4 A. The FBI, Massachusetts State Police, Homeland Security,
5 the Lynn Police Department, Revere Police Department, Chelsea
6 Police Department.

7 Q. And are there -- as part of your role on the gang task
8 force, have you been involved in the investigation of the gang
9 known as La Mara Salvatrucha or MS-13?

12:39PM 10 A. Yes.

11 Q. Can you describe for the jury what are some of the duties
12 and responsibilities you've had during the course of that
13 investigation?

14 A. Yes. I've been involved with the investigation for about
15 four years. I've been involved in surveillance, reviewing
16 video surveillance. I'm a Spanish speaker, one of two, and
17 have been involved with the case, so I have had a lot of
18 responsibility on reviewing surveillance recordings, audiotapes
19 and different activities of that nature, speaking to witnesses
12:40PM 20 and victims.

21 Q. You said you speak Spanish. Are you a fluent Spanish
22 speaker?

23 A. Yes.

24 Q. Fair to say you are one of the few fluent Spanish speakers
25 on the case team?

1 A. Yes.

2 Q. And as a result of that, have you been involved in
3 reviewing items that are in Spanish to try and understand and
4 translate some of them?

5 A. Correct.

6 Q. And to be clear, you're not formally translating, but
7 you've reviewed items and then highlighted for formal linguists
8 items that they should formally translate for the Court; is
9 that correct?

12:41PM 10 A. That is right.

11 Q. How long have you personally been involved in the MS-13
12 investigation that led to the charges against this defendant?

13 A. Approximately four years.

14 Q. And during the course of this investigation, have you also
15 when wearing your hat as a state law enforcement officer sought
16 search warrants and done investigative work to obtain evidence
17 from the state side that was used in this investigation?

18 A. Yes.

19 Q. And as an example of that, did you assist in writing a
12:41PM 20 search warrant for the house in Revere?

21 A. Yes.

22 MR. PASRICHA: Excuse me one moment, your Honor.

23 Q. This is the house at 70 Graves Street in Revere?

24 A. Yes.

25 Q. Did you also assist in executing the warrant at 70 Graves

1 Street in Revere, Graves Road in Revere?

2 A. Yes.

3 Q. And this was February 24th of 2015?

4 A. Correct.

5 Q. Did you seize a number of items from Graves Road in Revere
6 when executing the warrant?

7 A. We did.

8 Q. I'm showing you what's been marked as, previously marked
9 for identification as Exhibit 17. Do you recognize this item,
10 sir?

12:43PM

11 A. I do.

12 Q. And, for the record, what is this item?

13 A. It's a machete with a black handle and a black sheath.

14 Q. And is this one of the items you seized from
15 70 Graves Road in Revere?

16 A. Yes.

17 MR. PASRICHA: Your Honor, I'd move Exhibit 17 into
18 evidence.

19 MR. HALPERN: I have a continuing objection on the
20 time frame.

12:43PM

21 THE COURT: All right. That's overruled, and it's
22 admitted, Exhibit 17.

23 (Exhibit No. 17 received into evidence.)

24 Q. With the Court's permission, I am also showing you
25 Exhibit 16. Do you recognize this item, sir?

1 A. Yes, I do.

2 Q. And what is Exhibit 16?

3 A. It is a black Starter revolver.

4 Q. Is this also -- is this revolver also an item you seized
5 from Graves Road in Revere?

6 A. Yes.

7 MR. PASRICHA: Your Honor, I'd move Exhibit 16 into
8 evidence.

9 MR. HALPERN: I'm going to add an additional objection
10 that it's cumulative at this point.

11 THE COURT: It also hasn't been tied to MS-13, it's
12 just seized from a house in Revere, so sustained.

13 MR. PASRICHA: Your Honor, may we approach sidebar?

14 THE COURT: Yes.

15 (THE FOLLOWING OCCURRED AT SIDEBAR:)

16 MR. PASRICHA: Your Honor, Exhibit 17 is already in.

17 THE COURT: If it was objected only on the time frame,
18 I would have sustained an objection.

19 MR. PASRICHA: Fair. In that case, we'd ask that you
12:45PM 20 admit it de bene so that witnesses can later come in and talk
21 about how 70 Graves Road is an MS-13 hangout, including by
22 members from this defendant's clique went.

23 THE COURT: I won't admit it de bene, I'll admit it if
24 that evidence comes. In the meantime, it's just he can
25 identify it so this is where it's seized, and it doesn't come

1 in until it's tied to this case somehow, but I'll give you a
2 continuing objection on the time frame.

3 MR. HALPERN: Why don't you just ask him to explain
4 what the house was relating to.

5 MR. PASRICHA: We're also trying to minimize all the
6 other stuff that you didn't want. We can shorten it.

7 (SIDEBAR CONFERENCE WAS CONCLUDED)

8 Q. Is the search warrant you sought related to the MS-13
9 investigation?

12:45PM 10 A. Yes.

11 Q. Did your search warrant affidavit lay out facts suggesting
12 probable cause that items seized there are connected to MS-13?

13 A. Yes.

14 MR. PASRICHA: Your Honor, I would now move Exhibit 16
15 into evidence.

16 MR. HALPERN: So my objection at this point is not to
17 the foundation, it's to the time frame and that it's
18 cumulative.

19 THE COURT: Okay. I'll overrule those objections.

12:46PM 20 I'm sorry, you've offered 16 now?

21 MR. PASRICHA: Yes, your Honor.

22 THE COURT: All right. It's admitted.

23 (Exhibit No. 16 received into evidence.)

24 Q. Were there other bladed weapons you seized from that
25 address that day?

1 A. Yes, sir.

2 Q. With the Court's permission, I am showing you what's been
3 marked as Exhibit 18. Do you recognize that item?

4 A. I do.

5 Q. Is that another item you seized from that residence that
6 you tied to MS-13?

7 A. Yes.

8 MR. PASRICHA: Your Honor, I'd move Exhibit 18 into
9 evidence.

12:46PM 10 THE COURT: All right. It's admitted. Exhibit 18.
11 (Exhibit No. 18 received into evidence.)

12 MR. PASRICHA: Permission to show Exhibit 18 to the
13 jury, your Honor?

14 THE COURT: Yes.

15 Just to be clear, Mr. Halpern, I'm giving you a
16 continuing objection on time frame and cumulative --

17 MR. HALPERN: Thanks.

18 THE COURT: -- as to the items from this location.

19 Q. Finally, I am showing you Exhibit 19 marked for
12:47PM 20 identification. Do you recognize this item, sir?

21 A. I do.

22 Q. What is this item? Can you describe it for the record?

23 A. It's a machete-type knife with a black handle and a brown
24 sheath.

25 Q. Did you seize this from that MS-13 house as well?

1 A. Yes.

2 MR. PASRICHA: Your Honor, I'd move Exhibit 19 into
3 evidence.

4 THE COURT: All right. It's admitted, 19.

5 (Exhibit No. 19 received into evidence.)

6 Q. Can you tell the jury is there a marking on the brown
7 sheath that you can read?

8 A. Yes, there is.

9 Q. What does the marking on the sheath of the machete say?

12:47PM 10 A. It states, "Made in El Salvador."

11 MR. PASRICHA: Permission to show Exhibit 19 to the
12 jury, your Honor.

13 THE COURT: Yes, go ahead.

14 (Exhibit 19 was displayed to the jury)

15 Q. In explaining your experience or describing your
16 experience, you also talked about your prior career with the
17 Department of Corrections; is that correct?

18 A. Yes.

19 Q. What kind of work did you do for them?

12:48PM 20 A. Initially, I started as a correction officer working in
21 the cell blocks, then I became an investigator, inner permit
22 security at the prison in Concord, and then a few years after
23 that, I was also moved up to the Central Intelligence, Central
24 Intelligence Gang Unit in order to gather intelligence on gang
25 members within the prison system.

1 Q. What kinds of things would you look at in trying to obtain
2 intelligence about gang members when you were in prison?

3 A. We had different tactics. We would monitor inmates'
4 telephone calls, we'd also inmates' mail, develop informants
5 within the institution and attempt to gather as much
6 intelligence on gang-related matters within the institution and
7 to try to prevent violence inside the institution and violence
8 on the streets.

9 Q. And have you continued using some of those skills in your
12:49PM 10 current job?

11 A. Yes.

12 Q. Explain to the jury how the -- well, let me lay the
13 foundation. As a gang intel. officer in the prison system,
14 were you familiar generally with how the phone systems in
15 Massachusetts facilities work?

16 A. Within the Massachusetts Department of Corrections, yes.

17 Q. And explain to the jury as a general matter how do phones
18 work in a jail.

19 A. Well, each individual inmate has an individual pin that
12:50PM 20 they use. That pin is linked to their name. That pin will
21 also contain whatever amount of money they have in that, so
22 think of it like a calling card, and you might have -- you can
23 reup it as many times as like, and that pin also has a pin list
24 of numbers that they're allowed to call that has been approved,
25 and there's probably several phones within the tier or the cell

1 block in the institution. They can pick up any of those
2 phones, put in their PIN number, and it gives them access to
3 call anyone on their phone list.

4 Q. When people pick up the phone to make a call, are they
5 told that the calls are being monitored or the calls are being
6 recorded and may be monitored?

7 A. Yes.

8 Q. Does that warning impact your ability to find evidence
9 against gang members in jail?

12:51PM 10 A. Yes. Most inmates will attempt to not speak over their
11 phone, their pin assigned to them in order to, you know, so
12 because if they know that we're monitoring their phone or they
13 believe that we are, they're not going to talk over that
14 particular line because they've already been warned during
15 every call that they make.

16 Q. So what is a technique you have seen people use in jail to
17 circumvent that process?

18 A. They use a few things during my time working as an
19 investigator, visits were the first ones, visits in state
12:52PM 20 prison are unrecorded, so it's face-to-face, and none of that
21 information is being recorded or overheard, so anything that is
22 said during visits, we wouldn't be able to review.

23 Also, another common technique is using three-way
24 phone calls where --

25 Q. Can you describe -- and let me just pause there. Describe

1 three-way phone calls for the jury.

2 A. So they would ask another inmate to use their pin so
3 Inmate X would ask Inmate Y to call one of their family members
4 or one of their approved persons on their pin. Then once that
5 call goes through, that second person who they called would
6 then call another person on a three-way and then connect both
7 lines, then Inmate Y would pass Inmate X the phone so he can
8 talk to whoever he intended to call on Inmate Y's phone.

9 Q. So using that example, if you were trying to obtain
12:53PM 10 evidence against Inmate X, the general step would be to try to
11 look at Inmate X's phone calls, correct?

12 A. Correct.

13 Q. But in that example you used, if Inmate X just borrowed
14 Inmate Y or Inmate Z's pin number and made calls using that,
15 those numbers would never show up on Inmate X's phone records?

16 A. Right. That call wouldn't show up, and if you're
17 monitoring Inmate X's phone, that call wouldn't come up as a
18 call that you'd be able to monitor.

19 Q. Turning your attention back to some of the transcripts and
12:53PM 20 recordings, I had asked you before if based on your Spanish
21 fluency, you had reviewed recordings in this case, have you
22 reviewed various recordings during the course of this
23 investigation?

24 A. Yes.

25 Q. And these are videotaped or audiotaped recordings made by

1 Cooperating Witness 1. Are you familiar with those?

2 A. Yes.

3 Q. Did you then also review the accompanying transcripts of
4 those calls or at least excerpts of those calls?

5 A. Yes.

6 Q. Did you review a recording of a December 13th, 2015
7 meeting in Virginia that was an MS-13 leadership meeting?

8 A. Yes.

9 MR. PASRICHA: Your Honor, at this time I think it
12:54PM 10 would be helpful to read the transcript of that. We admitted
11 that into evidence yesterday as Exhibits 1 and 3. 1 is the
12 recording. 3 is the transcript that is in the jury's
13 transcript binders.

14 THE COURT: All right. So am I correct that this was
15 a meeting that was in Spanish, and we're reading an English
16 translation?

17 MR. PASRICHA: That is correct.

18 THE COURT: Any objection, Mr. Halpern?

19 MR. HALPERN: No.

12:54PM 20 Q. Do you have a binder, sir, with you?

21 A. No.

22 MR. HALPERN: Your Honor, other than the continuing
23 objection to the time.

24 THE COURT: All right.

25 MR. PASRICHA: Your Honor, may I approach the witness?

1 THE COURT: Yes.

2 MR. PASRICHA: Your Honor, I think there are parts
3 that I'd like to highlight for the jury and maybe read into the
4 record, and I know the jury can follow along, but I think it
5 would be helpful to read some parts together, and that's what I
6 intend to do with the witness.

7 THE COURT: All right.

8 Q. If you can turn to -- before we circle back, is it correct
9 that at some point during this call, various members and
10 leaders identified themselves by name?

12:55PM

11 A. Yes.

12 Q. And turning your attention to page 10, is that one of the
13 parts where leaders describe who they are and what clique they
14 are from?

15 A. Yes.

16 MR. PASRICHA: And it's tab 3 for the jury. It's page
17 10, tab 3.

18 Q. For the record, the bottom of the page number should be
19 stamped 64160. Can you read what Chucky VA says at the start
20 of that session?

12:56PM

21 THE COURT: Can I say this is Chucky from Virginia
22 who's not the Chucky we've been hearing about; is that the
23 idea?

24 MR. PASRICHA: Correct.

25 Q. Let me clarify. Are you familiar with the Chucky who is

1 on this call who identifies himself as the leader of the East
2 Coast program during this call?

3 A. Yes.

4 MR. PASRICHA: Yes, your Honor, it's a separate
5 Chucky.

6 THE COURT: All right.

7 Q. What does Chucky from Virginia say, can you just read that
8 into the record, please.

9 A. "We are almost finished here but we wanted to talk to you
10 a little -- we wanted to talk a little while so that you could
11 talk to them. 13 cliques came, but not all of them came.
12 Buddy, all right. Wait. I'm going to put them on one at a
13 time, all right."

14 Q. And do they then get on one at a time and describe what
15 cliques they are from on page 10 and page 11; do you see that?

16 A. I do, yes.

17 Q. Turning to page 11 about 20 minutes later, why don't we
18 read in some of the parts just through the end of the page, and
19 I'll read Di mente, you read Chucky VA.

12:58PM 20 "I want to bring up something before we close, Bro."

21 A. "Okay."

22 Q. "Concerning a territory, you know what I mean, it's
23 Chelsea, man, it belongs to the Chelsea Lacotes but the Chelsea
24 Locotes' brother."

25 A. "They don't want anything?"

1 Q. "They're not there, they're not there right now."

2 A. "No one is there?"

3 Q. And what's the next thing Chucky says after that?

4 A. "So we need to put in work because you want to be well
5 organized."

6 Q. Drawing your attention to the bottom of the page, the part
7 from Sugar. Am I correct that during this call Sugar
8 self-identifies himself as Sugar?

9 A. Yes.

12:58PM 10 Q. And he further identifies himself as the leader of the
11 program from El Salvador?

12 A. Correct.

13 Q. I'd like you to read into the record the paragraph where
14 Sugar says, "The reason that this meeting was held."

15 A. "The reason that this meeting was held over there,
16 unintelligible, as you know, certain points were discussed. I
17 am the runner for down here from El Salvador, from the program.
18 Not many know me over there. I am Sugar from the Everett
19 Locals, you know, we are here as representatives of the
12:59PM 20 program, out here in the street in C Bar, you understand."

21 "One of the points that was discussed there, I
22 believe, was unity and brotherhood that we all must share,
23 everyone together when the time comes to carry out some action
24 because the result is that many of the cliques up there are
25 very independent and stupidly insist that this is their side.

1 Others are somewhere else with their side, and in the
2 meanwhile, the enemy are filling up the turfs around us, you
3 know."

4 Q. The group responds, "That's right, sir." What does Sugar
5 say next?

6 A. "So what we're asking is total cooperation. Let us work
7 as Mara Salvatrucha, MS-13, that we are, do you understand?
8 Let us not, unintelligible. Well, yes, that we swore this,
9 that it was that, that no one can do it that way and so on.

01:00PM 10 No, let's carry out the work of Mara Salvatrucha, you know."

11 Q. And when the group agrees and says, "Yes, yes," how does
12 Sugar continue?

13 A. "Let's all work together, united, you know, everyone
14 relaxed, watching out for each other. If someone has an issue
15 or has a problem with another clique, you should approach the
16 program, unintelligible. In order to carry out the modest
17 work, you know, in the end, nowadays we are losing the culture,
18 know, dudes going around saying, This is my turf, and the enemy
19 is filling up our turfs, you know, so let us focus on the work
01:01PM 20 we must do as MS-13, you know, because here we all represent
21 the Mara Salvatrucha."

22 "The only thing that divides us is our last name, each
23 member of each clique, you know, those are last names, but we
24 always represent the two letters, you know."

25 Q. Based on this experience with the investigation, is the

1 two letters MS?

2 A. Yes.

3 THE COURT: Ladies and gentlemen, can I steal 5 or 10
4 minutes of your time to make up ground, is that okay?

5 MR. PASRICHA: Thank you, your Honor. We'll finish
6 this transcript.

7 Q. What direction does Sugar give next?

8 A. "Exactly. In other words --"

9 Q. Sorry, let me interrupt. I thing you skipped. Can I
01:02PM 10 please have you read, "The issue at hand as well."

11 A. The issue at hand is that we should lend each other a
12 hand, see how things work there, listen to what the homeboys
13 are telling you, and we are here to help all of you homeboys up
14 there and see how it's going to work, see what you have and put
15 the work out, like I tell you, to put it this way, the cliques
16 keep growing, you know, the cliques are there, the Mara, you
17 know around here, unintelligible, chavales over there.

18 Q. Do you know what "chavales" means?

19 A. Yes, "chavales" is a word that MS-13 uses to identify
01:02PM 20 members of the 18th Street gang, enemies.

21 Q. And an unidentified male, and for the jury, the
22 transcribers note on the first page, but "UM" means
23 unidentified male. Unidentified male says, "Like I tell the
24 dudes, we have to carefully choose the people that are going to
25 be with us, unintelligible. We don't know. We have to select

1 the people we are going to work with or end it with them,
2 Doggy." What does Sugar say next?

3 A. "Exactly. In other words, that, over there, I think your
4 cliques have chosen you guys as the runners because you know
5 what time it is with you guys, and at any time that you decide,
6 you grab a kid. Remember that here in El Salvador, it's
7 different. Over there, there are some dudes that
8 unintelligible. In El Salvador, it's different from up there.
9 Up there, the kids say, I have done this and this and this.

01:03PM 10 When the time comes to kill the son of a bitch that came your
11 way or something, they'll do it, but days later, they are
12 terrified, you know, it's different."

13 "Over here, we have to be intelligent. You guys as
14 the clique runners over there have to analyze people, observe
15 them, you know, and if so, yes, because here there are three
16 steps that chequeos must take. They make it first to paro,
17 then to observation, then to chequeo until they make it to
18 homeboy, you know. You have to, unintelligible, properly and
19 consider carefully whom you're going to take so that later, you
01:04PM 20 know, all of you won't have to suffer the consequences, you
21 know."

22 Q. And is it your understanding that "suffer the
23 consequences" relates to letting in chequeos and paros and
24 younger members who can't be trusted and who may rat out
25 members of the gang?

1 A. That is right.

2 MR. HALPERN: Objection.

3 THE COURT: Sustained. The answer will be struck.

4 Q. What does Sugar say next?

5 A. "And those sons of bitch, and those sons of bitch that
6 don't unfortunately understand that because you guys know how
7 hot things are, Brother, you know, and be very careful. All of
8 you that are there, Brother, be careful, you know. With the
9 culeros that are ratting, so think about it carefully because
01:05PM 10 in the end, unintelligible, and I think this homeboy
11 specifically got the, unintelligible. Because sooner or later,
12 the son of a bitch, unintelligible, sooner or later, he always
13 falls into the claws of the beast."

14 "We wake him up, whether it's up there or down here,
15 we are going to cry for him because, you know, I'm going to
16 speak very clearly. You must be very careful about who you
17 bring in and talk to, you know, because the fucking pieces of
18 shit up there, Brother, have it worked out. They give them a
19 car, they give them, unintelligible, and some days later they
01:06PM 20 want to grab them for something, they say FBI, and the sons of
21 bitches are there, you know, because the FBI gives them a car,
22 gives them money, gives them everything, and when they give
23 them all that, they loosen their tongues."

24 "You know, it's the outcome of what they're bringing
25 in that they're going to kill, and then they are two-faced.

1 You have to know all the information, analyze to whom you're
2 going to talk, and if, yes, unintelligible, be very careful
3 because in the end, a son of a bitch that has, unintelligible,
4 up there because in the end, we are going to put him on the
5 black list, you know."

6 Q. And an unidentified male says, "That's right, we're
7 carrying a fork, like I tell the dudes here just what you're
8 saying, that they must be clearly the people because the son of
9 a bitch that betrays someone, we're not going to forgive him
01:07PM 10 here, homeboy." What does Sugar say next?

11 A. "Unintelligible, I'm going to say it clearly over here,
12 the Mara makes him, the Mara removes him."

13 Q. And what does Sugar say after someone says the other
14 thing?

15 A. "Unintelligible, just as the Mara makes him, the Mara also
16 removes him, if, unintelligible, catches him, son of a bitch
17 doesn't understand, they get dirty because they want to,
18 Brother. Life is rosy. You know, one must live it properly
19 and stick to the thing that one hears and sees, unintelligible,
01:07PM 20 so be very careful with all the chequeos. Any kid that you
21 have and that you might say something in their presence, you
22 know, that's what I want to talk about to you guys, be
23 careful."

24 Q. And an unidentified male says, "Okay, homeboy, I also want
25 to mention the subject of the outfits, going out with a lot of

1 dudes in the street to get some action, moving, also with the
2 shoes, Niki Cortez, Bro." How does Sugar respond is to that?
3 A. In other words, that thing about the color, I'm going to
4 tell you something, unintelligible, a different system of shoes
5 and all that, but I'm going to tell you something, over there
6 you have the color of the United States, which is what the gang
7 members want respect, unintelligible. Dressed like that, the
8 enemy can see you, the police can arrest you, and, boom, to
9 El Salvador, so each one has to look at that, and that issue is
01:08PM 10 great because I'm going to tell you something. We, as Everett
11 locals, founded in Boston, unintelligible, we're already
12 cutting out all that bullshit from the homeboys of my clique,
13 you know, dressing like that because, unintelligible, in a more
14 terminology way, you know, because to live a great life there,
15 one must be humble, you know, to avoid being detected because
16 what's the use of going around like that if within days all
17 this, unintelligible, and one is sent back here,
18 unintelligible.

19 Q. Let's move ahead to the next paragraph where Sugar says,
01:09PM 20 "Well, that's awesome," can you read that paragraph?

21 A. "Well, that's awesome, it's awesome that you guys start
22 working like this, the cliques over there because in the end
23 everyone from the side from Boston, New York, everyone,
24 unintelligible, gang members, but if you guys dress with your
25 sport shoes, unintelligible, the police are going to stop you

1 because over there, unintelligible, like in El Salvador."

2 Q. And let me take 30 seconds to just flip back to page 2
3 towards the middle of the page. Do you see where Chucky VA
4 says, "In our program"?

5 A. Yes.

6 Q. Can you read that paragraph, please.

7 A. "In our program, in our program, all the cliques have to
8 be united, they have to be united, especially because all of
9 the hits that are going to happen. Deeds have to be

01:10PM 10 coordinated and requested beforehand, and they have to be
11 evaluated to see whether they'll actually happen or not.

12 Homeboy because, look, there are cliques that are doing things
13 here, man, and I hear about it a week later after they did it,
14 and what's up with that? They end up looking bad, and they
15 make us look bad, too, Bro. "

16 Q. And, finally, you turn the page, the top of that section
17 on page 3 where Chucky VA says, "But that business, but one but
18 that business." Could you read that paragraph, please.

19 A. Sure. "But one, but that business, man, that business
01:11PM 20 there, this is why I'm telling you they need to plan it well,
21 and all of the sons of bitches that are snitching, you know,
22 that the sons of bitches who are doing stuff, we are going to
23 investigate them, man, and we are going to kill those sons of
24 bitches so they can see what's up, then we'll even go after
25 their family, what the program says, homey."

1 MR. PASRICHA: Nothing further at this time, your
2 Honor.

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4
5 C E R T I F I C A T E

6
7 UNITED STATES DISTRICT COURT)
8 DISTRICT OF MASSACHUSETTS) ss.
9 CITY OF BOSTON)

10
11 I do hereby certify that the foregoing transcript,
12 Pages 1 through 110 inclusive, was recorded by me
13 stenographically at the time and place aforesaid in Criminal
14 Action No. 15-10338-FDS, UNITED STATES vs. RAFAEL
15 LEONER-AGUIRRE and thereafter by me reduced to typewriting and
16 is a true and accurate record of the proceedings.

17 Dated this 10th day of November, 2017.

18 s/s Valerie A. O'Hara

19 _____
20 VALERIE A. O'HARA

21 OFFICIAL COURT REPORTER
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